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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1244.

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI, EX REL: JOHN F. GUFFEY, COLLECTOR OF REVENUE OF PUTNAM COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED OCTOBER 22, 1886.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court before you, at the April term, 1886, thereof, between the State of Missouri, *ex rel.* John F. Guffey, collector of the revenue of Putnam county, respondent, and the Chicago, Burlington and Kansas City Railroad Company, appellant, a manifest error hath happened, to the great damage of the said appellant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said U. S. Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said U. S. Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 10th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, dated as aforesaid.

{Seal of the United States Circuit Court for the Western District of Missouri, Eastern Division.}

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—
JNO. W. HENRY, *Chief Justice.*

b *Return to Writ.*

UNITED STATES OF AMERICA, *Western District of Missouri,* } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 27th day of August, A. D. 1886.

[Seal of the Supreme Court of Missouri.]

HENRY W. EWING, *Clerk,*
By H. Y. SHERWOOD, *Dep. Clk.*

[Endorsed:] No. —. United States circuit court, western district of Missouri, eastern division. John F. Guffey, collector, etc., relator, *vs.* Chicago, Burlington & Kansas City Railroad Company. Writ of Error, to the supreme court of State of Missouri.

c THE UNITED STATES OF AMERICA:

To the State of Missouri, *ex rel.* John F. Guffey, collector of the revenue of Putnam county, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein the Chicago, Burlington and Kansas City Railroad Company [is] plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John W. Henry, chief justice of the supreme court of the State of Missouri, this seventh day of July, in the year of our Lord one thousand eight hundred and eighty-six.

JNO. W. HENRY,
Chief Justice.

d UNITED STATES OF AMERICA, }
Western District of Missouri, } *ss:*

I, J. F. Guffey, hereby acknowledge due service of the within citation this 16th day of July, A. D. 1886.

JOHN F. GUFFEY.

STATE OF MISSOURI, }
County of Putnam, } *ss:*

I, S. H. Newell, sheriff of the county of Putnam, State of Missouri, hereby certify that I executed the within notice by delivering to J. F. Guffey a true copy of within on the 16th day of July, 1886.

S. H. NEWELL,
Sheriff Putnam Co., Missouri.

[Endorsed:] United States circuit court, western district of Missouri, eastern division. John F. Guffey, collector, etc., relator, *vs.* Chicago, Burlington and Kansas City Railroad Company. Citation. Filed July 7th, 1886. Henry W. Ewing, clerk, by H. Y. Sherwood, dep. cl'k.

1 STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 28th day of December, 1885, there was filed in the office of the clerk of the su-

preme court of Missouri a transcript from the circuit court of Putnam county, which is in the words and figures following, to wit:

STATE OF MISSOURI, } 88:
County of Putnam, }

Pleas before the circuit court of Putnam county at a term begun and holden in the city of Unionville, county and State aforesaid, on the third Monday of August, 1885, before the Hon. Andrew Ellison, judge of the 27th judicial circuit of the State of Missouri.

Petition to Enforce Lien for Taxes.

STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,

against

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant.

2 Be it remembered that heretofore, to wit, on the 26th day of January, 1884, there was filed with the clerk of the circuit court of this county a petition in the above-entitled cause, which is in words and figures following, to wit:

Petition.

In the Circuit Court of Putnam County, Missouri. February Term, 1884.

STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,

against

THE CHICAGO, BURLINGTON & KANSAS CITY RAILROAD COMPANY, Defendant.

The State of Missouri, *at* the relation and to the use of John F. Guffey, collector of revenue of Putnam county, alleges that John F. Guffey is the legally qualified and acting collector of the revenue within and for the county and State aforesaid; that the defendant is a corporation organized and existing according to law; that
3 on or about the first day of June, 1883, the defendant was the owner and had control of the following railroad property, to wit: A strip of land fifty feet wide on each side of the middle of the track of the railroad, situate in said county, through and in the following-described sections of land, situate in said county, to wit: Sections 27, 33, & 34, in township 67, of range 18; sections 4, 5, 7, 8, 18, & 19, in township 66, range 18; sections 24, 25, 35, & 36, in township 66, range 19, and sections 3, 10, 15, 16, 21, 28, 29, 30, & 31, in township 65, range 19, and the railroad along & on the middle of said strip, and the road-bed of the same, and iron rails, bolts, and fastenings thereof, and the cross-ties on which they are secured, & all the bridges & culverts & water-tanks, depots, and other build-

ings situate on & along the line of said railroad on said strip of land aforesaid, and all the material of which the same is composed, which was then and there subject to taxation for State, county, school, and other purposes, and there was legally assessed and levied
4 against said property for the year ending June first, A. D. 1883, for State, county, school and other municipal purposes the aggregate sum of sixteen hundred and twenty-four dollars and sixty cents; that on the 27th day of December, 1883, defendant paid the taxes designated school tax and railroad tax, amounting to the sum of six hundred and four & $\frac{32}{100}$ dollars, of the taxes so assessed and levied; that of the taxes so levied and assessed there is now due and unpaid for State purposes the sum of three hundred and two & $\frac{16}{100}$ dollars; for county purposes the sum of four hundred and fifteen dollars & forty-five cents, and for city, town, and other municipal purposes the sum of three hundred and two dollars and thirteen cents, amounting in the aggregate to the sum of one thousand and nineteen dollars and seventy-four cents, which sum defendant has failed to pay, as required by law; that plaintiff is entitled to recover of defendant a penalty of one per cent. per month on the amount so due and unpaid from the first day of
5 January, 1884, until the same shall be paid.

Plaintiff further says that the taxes so assessed and levied are by virtue of the laws of the State a prior lien on said road-bed, real estate, and other property. Wherefore plaintiff prays judgment for the said sum of one thousand and nineteen dollars & seventy-four cents and the penalty thereon until the same shall be paid, and for a reasonable attorneys' fee and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced, and that said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property. And as a further cause of action and second count plaintiff says that on or about the first day of June, A. D. 1882, the defendant was the owner and had control of the following railroad property, to wit: A strip of land fifty feet wide on each side of the middle of the track of the railroad, situate in said county, through and in the following-described sections of land, situate in said county, to wit: Sections 27, 33, & 34, in township
6 67, of range 18; sections 4, 5, 7, 8, 18, & 19, in township 66, range 18; sections 24, 25, 35, & 30, in township 66, range 19, and sections 3, 10, 15, 16, 21, 28, 29, 30, & 31, in township 65, range 19, and the railroad along & on the middle of said strip of land in said sections, and the road-bed of the same, the iron & steel rails, bolts, & fastenings thereof, & the cross-ties on which the same are laid, and all the bridges, culverts, water-tanks, depots situate on the line of said strip of land, in said several sections of land, & used in & with said railroad & forming a part thereof, and was then & is now the only railroad in said county, and which was then and there subject to taxation for State, county, school, and other purposes, and there was legally assessed and levied against said property for the year A. D. 1882, for State, county, school, and other municipal pur-

poses the aggregate sum of thirteen hundred and seventy-six & $\frac{10}{100}$ dollars; that on the 23d day of March, 1883, defendant paid of the taxes so assessed & levied for the year 1882 the taxes designated and set apart in columns separate from other taxes as "railroad tax," "school tax," and "township tax," amounting to the sum of six hundred & fifty-two dollars & fifty-six cents; that of the other taxes
7 so assesed & levied there is now due & unpaid for State purposes the sum of two hundred & ninety dollars & two cents, for county purposes the sum of two hundred & fifty-three dollars and seventy cents; for city & town and other municipal purposes the sum of one hundred and seventy-nine dollars and seventy-six cents, amounting in the aggregate to the sum of seven hundred and twenty-three dollars and fifty-four cents, which sum the defendant failed to pay, as required by law. The plaintiff is entitled to recover of defendant a penalty of one per centum per month on the amount so due & unpaid from the first day of January, 1883, until the same shall be paid. Plaintiff further says that the taxes so assessed and levied are by virtue of the laws of this State a prior lien on said road-bed & real estate and other property. Wherefore plaintiff prays judgment for the said sum of seven hundred and twenty-three & $\frac{54}{100}$ dollars and the penalty thereon until the same shall be paid, and for a reasonable attorneys' fee and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien
8 be enforced, and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

A. J. HASKINSON, *Pros. Att'y.*

Whereupon there was a writ of summons issued on the 26th day of January, 1884, by the clerk of the circuit court of Putnam county, Missouri, in words and figures following, to wit:

Summons.

In the Circuit Court.

STATE OF MISSOURI, }
County of Putnam, } *ss:*

The State of Missouri to the sheriff of Putnam county, Greeting:

We command you to summon The Chicago, Burlington and Kansas City Railroad Company, if it be found in your county, to appear before our circuit court to be held within and for the county of Putnam, at the court-house, in the city of Unionville, in said county, on the first day of the next term thereof to be begun and held on the second Monday in February next, A. D. 1884, then and there before the judge of our said court to answer the petition of State of Missouri, *at* the relation and to the use of John F. Guffey, collector of the revenue of Putnam county (which said petition is
9 herewith annexed), and have you then and there this writ, with the return of your action thereupon.

Witness my hand as clerk of our said court and the seal thereof. Done at office in Unionville, in the county aforesaid, on the 26th day of January, A. D. 1884.

[SEAL.] PETER GREGGERS,
Circuit Clerk.

Upon which said summons is the sheriff's return in words and figures following, to wit:

Sheriff's Return.

Served the within writ in the county of Putnam on the 26th day of January, 1884, by delivering a copy of the within writ and petition to Ed. Freed, station agent of the Chicago, Burlington and Kansas City Railroad Company, at Unionville, Mo.

Fee, $1.00.

G. N. STILLE,
Sheriff of Putnam County.

And afterwards, to wit, on the 21st day of February, 1884, it being the 10th day's proceeding of the February term, 1884, of said court, the following further proceedings were had in said cause, to wit:

Cont'd.

THE STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Missouri, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Taxes.

It is ordered by the court that this cause be continued, and that the defendant have leave to answer.

10 And afterwards, to wit, on the 25th day of August, 1884, it being on the 7th day's proceeding of the regular August term, 1884, of said court, the following further proceedings were had in said cause, to wit:

Cont'd.

STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Taxes.

It is ordered by the court that this cause be continued until the next term of this court.

And afterwards, to wit, on the 11th day of February, 1885, it being on the 3d day's proceeding of the regular February term, 1885, of said circuit court, the following other proceedings were had in said cause, to wit:

Answer Filed.

THE STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendants. } 4315.

Taxes.

Now at this day comes the defendant, by *her* attorneys, and files *her* answer in this cause.

Which answer is in words and figures following, to wit:

11 *Answer.*

In the Circuit Court of Putnam County, Missouri. February Term, 1885.

THE STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Missouri, Plaintiff,

against

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant.

Now at this day comes the defendant, by attorneys, and for its answer to plaintiff's petition says that it denies each and every allegation therein contained, unless it is herein expressly admitted.

Defendant admits that it is a corporation organized and existing under the laws of the State of Missouri.

Defendant states that it is the successor by successive conveyances and assignments of the property, rights, privileges, franchises, and immunities of the St. Joseph and Iowa Railroad Company, a corporation organized under and by virtue of an act of the General Assembly of the State of Missouri entitled "An act to incorporate the St. Joseph and Iowa Railroad Company," approved January 22, 1857, and amended by an act of the General Assembly of the State of Missouri entitled "An act to amend the charter of the St. Joseph and Iowa Railroad Company," approved November 5, 1857.

And further amended by an act of the General Assembly of the State of Missouri entitled "An act to amend an act entitled An act to incorporate the St. Joseph and Iowa Railroad Company to extend the time for the construction of said road and to facilitate the construction of the same," approved March 19, 1866.

And that under the provisions of the aforementioned acts of the

General Assembly and the acts upon which said acts are predicated and forming a part thereof, the capital stock and property of said railway company is exempt from all State and county taxes.

And defendant further states that under and by virtue of the above-mentioned acts of the General Assembly, the St. Joseph & Iowa Railroad Company had power to locate, construct, and maintain its main line between the town of Unionville, in Putnam county, Missouri, and a point of intersection with the line dividing the State of Missouri and Iowa, at or near the town of Mendota, in said said Putnam county, Missouri, and that said railroad company itself, and by its successors and assigns, did actually construct such line of railroad prior to the first day of January, 1873.

And defendant further says that under and by virtue of an act of the General Assembly of the State of Missouri entitled "An act to aid the building of branch railroads in the State of Missouri," approved March 21, 1868, and the authority of the above-enumerated acts touching the organization and existence of the St. Joseph
12 and Iowa Railroad Company, said St. Joseph and Iowa Railroad Company had power and authority to build branch lines of railroad in the State of Missouri.

And that said St. Joseph and Iowa Railroad Company, on the 25th day of March, 1871, by its board of directors, at a regular meeting thereof, in the city of St. Joseph, Missouri, by resolution duly adopted, did project and provide for the construction and maintenance of a branch line, to be known as and called the Central North Missouri Branch of the St. Joseph and Iowa Railroad Company, said branch line to be built from a point of intersection with the main line of the St. Joseph and Iowa railroad at or near the town of Unionville, in the county of Putnam, in the State of Missouri, and running thence southwesterly through the county of Putnam, etc., in said State, which said resolution, duly authenticated, was filed in the office of the secretary of state of the State of Missouri on the 19th day of April, 1871.

That immediately thereafter said railroad company began the construction of said branch line of railroad, beginning the construction thereof at a point on the main line of said railroad at the town of Unionville aforesaid and following the line proposed by the board of directors aforesaid, and by itself and its successors and assigns prosecuted the construction of said branch line to completion southwesterly through said Putnam county, and prior to January 1st, 1874, it was completed and in operation through said Putnam county.

Defendant states that it is the line of railroad above mentioned, including the main and branch line running through said Putnam county, that is sought to be charged with taxes in this action; but that, under the provisions of the acts of the General Assembly referred to herein touching the organization and existence of the St. Joseph and Iowa Railroad Company, the capital stock and property of said line of railroad was exempt from all State and county taxes, and that the capital stock and property of said company is still exempt from said State and county taxes.

Defendant admits that it is liable for the payment of taxes for school purposes, and that it is liable for taxation for the purpose of paying the interest and principal of the railroad indebtedness of said county and for taxes for municipal purposes in the various municipal corporations through which its line runs, and herein avers that all taxes of that character have been paid in full.

Defendant denies that in the year 1883 there was legally assessed and levied against the property of defendant any tax whatever amounting to three hundred and two & $\frac{16}{100}$ dollars, or any other sum, for State purposes for the year 1883 or any other year.

Defendant denies that in the year 1883 there was legally assessed and levied against the property of defendant any tax whatever amounting to four hundred and fifteen & $\frac{45}{100}$ dollars, or any other sum, for county purposes for the year 1883 or any other year.

13

Defendant denies that there is any money due relator in any capacity whatever from defendant for State purposes for the year 1883 or any other year.

Defendant denies that there is any money due relator in any capacity whatever from defendant for county purposes for the year 1883 or any other year.

Defendant denies that there is any money due relator in any capacity whatever from defendant for any cost, penalties, or fees of any character whatever on account of non-payment of any tax whatever against the defendant for the year 1883 or any other year.

Defendant denies that relator in any capacity whatever has any lien against the property of defendant upon any account whatever.

Defendant, further answering, denies that in the year 1882 there was legally assessed and levied against the property of defendant any tax whatever amounting to two hundred and ninety & $\frac{7}{100}$ dollars, or any other sum, for State purposes.

Defendant denies that in the year 1882 there was legally assessed and levied against the property of defendant any tax whatever amounting to two hundred and fifty-three & $\frac{76}{100}$ dollars, or any other sum, for county purposes.

Defendant denies that there is any money due relator in any capacity whatever from defendant for State purposes for the year 1882 or any other year.

14

Defendant denies that there is any money due relator in any capacity whatever from defendant for county purposes for the year 1882 or any other year.

Defendant denies that there is any money due relator in any capacity whatever from defendant for any cost, penalties, or fees of any character whatever on account of non-payment of any tax for the year 1882 or any other year.

Defendant denies that relator in any capacity whatever has any lien against the property of defendant upon any account whatever.

Wherefore defendant, having fully answered, asks to be discharged, with its costs in this behalf expended.

J. H. CARROLL,
A. W. MULLINS, AND
L. T. HATFIELD, *Attorney-*.

And afterwards, to wit, on the 16th day of February, 1885, it being in the 7th day's proceeding of the regular February term of said court, and on the 7th day's proceeding thereof, the following other proceedings were had in said cause, to wit:

Cont'd.

THE STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Taxes.

It is ordered by the court that this cause be continued until the next term of this court.

Rep. Filed.

And afterwards, to wit, in vacation, after the regular February term, 1885, of said court, it being on the 2d day of July, 1885,
15 there was filed in the clerk's office of the circuit court of this county by the plaintiff a reply to defendant's answer in words and figures following, to wit:

Replication.

In the Circuit Court of Putnam County. In Vacation, July, 1885.

THE STATE OF MISSOURI *ex rel.* J. F. GUFFEY, Plaintiff,

vs.

THE CHICAGO, BURLINGTON & KANSAS CITY RAILWAY COMPANY, Defendant.

Now comes the said plaintiff, and in reply to the said defendant's answer filed herein denies each and every allegation of new matter in said answer contained, and asks judgment as prayed in the petition herein.

THOS. BERRY & S. P. HOUSTON,
Att'ys for Plaintiff.

And afterwards, to wit, on the 22d day of August, 1885, it being in the 6th day's proceeding of the regular August term, 1885, of said court, the following further proceedings were had in said cause, to wit:

Trial & Judgment.

THE STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, in the State of Missouri, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Taxes.

Now at this day come the respective parties, plaintiff and defendant, in the above-entitled cause, by their attorneys, and, answering ready for trial, waive a jury, and submit the issues to the
16 court for trial, and the court having heard all the evidence in the cause and the argument of counsel, and being fully advised in the whole matter, doth find for the plaintiff upon the first count in the petition the sum of ten hundred and forty-two dollars and sixty-five cents for taxes for the year 1883, due to the several funds as follows: State, with penalties and commission, three hundred and eighty dollars and seventy-two cents; county tax, with penalty and commission, the snm of five hundred and nineteen dollars and forty cents, and for township tax, with penalty and commission, the sum of one hundred and forty-two dollars and seventy-three cents. The court further finds for the plaintiff on the second count in the petition, and doth assess the sum due thereon to plaintiff at seven hundred and fifty-three dollars and ninety cents for taxes for the year 1882, due to the several funds as follows: State tax, including penalty and commission, the sum of four hundred and two dollars and twenty-seven cents; county tax fund, including penalties and commission, the sum of three hundred and fifty-one dollars and seventy cents. The court doth further find that the taxes aforesaid were assessed and levied for both of said years upon the following-described property, situate in the county of Putnam, State of Missouri, then and now owned by the defendant herein, to wit: A strip of land fifty feet wide on each side of the middle of the track of the
17 railroad, situate in said county through and in the following-described sections of land, situate in said county, to wit: Sections 27, 33, & 34, in township 67, of range 18; sections 4, 5, 7, 8, 18, & 19, in township 66, range 18; sections 24, 25, 35, & 36, in township 66, range 19, and sections 3, 10, 15, 16, 21, 28, 29, 30, and 31, in township 65, range 19, and the railroad along and in the middle of said strip, and the road-bed of the same, and iron rails, bolts, and fastenings thereof, and the cross-ties on which they are secured, and all the bridges, and culverts, and water-tanks, depots, and other buildings situate on and along the line of said railroad on said strip of land aforesaid, and all the material of which the same is composed. It is therefore considered and adjudged by the court that the plaintiff do have and recover of the said defendant the sum of seventeen hundred and ninety-six dollars and fifty-five cents, due for the taxes aforesaid, due to the funds as aforesaid, with interest thereon from this date at the rate of one per cent. per month until paid, to be levied of the

property hereinbefore described; that the same so found and all costs adjudged to be due to the plaintiff is declared a first lien upon the property hereinbefore described, and that the same be enforced, and the said property, or so much thereof as may be necessary to pay and satisfy said amount, interest, and cost, be sold to satisfy the same, and that a special execution issue for the enforcement of
18 said lien and the sale of said property according to law.

And afterwards, to wit, on the 22d day of August, 1885, it being on the 6th day's proceeding of the regular August term, 1885, of said court, the following other proceedings were had in said cause, to wit:

Mo. for New Trial Filed.

STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Taxes.

Now at this day comes the defendant, by its attorneys, and files its motion to set aside the finding and judgment in this cause and grant a new trial.

And afterwards, to wit, on the 22d day of August, 1885, it being on the 6th day's proceeding of said August term of said court, the following further proceedings were had in said cause, to wit:

Mo. [for] New Trial Ov'r'l'd.

STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Now at this day come the said parties, by their respective attorneys, and the defendant's motion to set aside the finding and judgment in this cause came on for hearing, both parties answer
19 ready; the same is taken up by agreement and by the court seen and heard; and the court, being fully advised in the premises, doth overrule the same, to which ruling of the court the defendant then and there excepted and save its exception herein.

And afterwards, to wit, on the 22d day of August, 1885, it being on the 6th day's proceeding of said August term, 1885, the following further proceedings were had in said cause, to wit:

Motion in Arrest F'l'd & Ov'r'l'd.

STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Taxes.

Now at this day comes the defendant, by its attorneys, and files its motion in arrest of the judgment in this cause, which motion is by consent of the respective parties taken up for hearing forthwith, and the same being seen and heard by the court, and the court, being fully advised in the premises, doth overrule the same, to which ruling of the court the defendant then and there excepted, and
20 saves its exceptions herein.

And afterwards, to wit, on the same day last aforesaid, at the said August term, 1885, of said court, the following other proceedings were had in said cause to wit:

Leave to File Bill of Excep. 30 D'ys After C't.

STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Taxes.

Now at this day come the said parties, by their respective attorneys, and upon their agreement it is ordered by the court that the defendant have leave to file its bill of exceptions thirty days after court.

And afterwards, to wit, on the same day last aforesaid, to wit, the 22d day of August, 1885, it being on the 6th day's proceeding of said August term of court, the following further proceedings were had in said cause, to wit:

Affidavit in Appeal Filed & Appeal Allowed.

STATE OF MISSOURI, *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Taxes.

21 Now at this day comes the defendant, by its attorneys, and files its affidavit and prays for an appeal to the supreme court

of the State of Missouri, on consideration of which it is by the court ordered that said appeal be allowed; and it is further ordered by the court that the clerk of this court make out a transcript of the record and proceedings in this case and transmit the same to the clerk of the supreme court of the State of Missouri.

And afterwards, to wit, on the 22d day of August, 1885, it being on the 6th day's proceeding of said August term of said court, the following other proceedings were had in said cause, to wit:

App'l Bond F'l'd & Approved.

STATE OF MISSOURI, *at* the Relation and to the use of John F. Guffey, Collector of the Revenue of Putnam County, Plaintiff,
against
THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Defendant. } 4315.

Taxes.

Now at this day comes the defendant, by its attorneys, and files its bond in appeal from this court to the supreme court of the State of Missouri, which bond is seen and heard by the court, and by the court approved.

Bill of Ex. F'l'd.

And afterwards, to wit, during vacation, after the regular August term, 1885, of said court, it being on the 24th day of September, 1885, and within 30 days after the adjournment of the said court at said August term, there was filed a bill of exceptions with the clerk of said court in words and figures following, to wit:

22

Bill of Exceptions.

In the Circuit Court of Putnam County, Missouri. August Term, 1885.

In the Matter of the State of MISSOURI, *ex rel.* John F. Guffey, Collector of Putnam County, Mo.,

vs.

CHICAGO, BURLINGTON & KANSAS CITY RAILROAD CO.

There were had the following proceedings:

Case called for trial at 1 o'clock p. m., August 20th, 1885. The plaintiff's petition, defendant's answer, and plaintiff's reply to the defendant's answer were read to the court by the respective parties, after which plaintiff offered the following evidence:

Plaintiff offers in evidence the certificate of assessment by the State board of equalization for the year 1883.

Plaintiff also offers the same for 1882.

Testimony of Jno. F. Guffey.

JOHN F. GUFFEY, collector of the revenue of Putnam county, being sworn on behalf [of] the plaintiff, testified as follows:

Direct examination by Mr. HUSTON:

23 Q. State what position you are holding now and were at the time this suit was commenced.

A. Treasurer and *ex officio* collector of Putnam county, Mo.

Q. State what book that is you hold in your hand.

A. Railroad tax-book of this county.

Q. Will you turn to the taxes against this company?

A. Yes, sir.

Q. What book is that?

A. Railroad tax-book.

Q. Will you turn to the record of taxes against this company for 1882?

A. Yes, sir; I have it here.

Q. Will you state to the court what of those taxes have been paid by the defendant?

A. Yes, sir; the interest on the railroad bonds of this county and the school taxes.

Q. The tax for what funds remain unpaid?

A. State revenue tax, county revenue, special tax, township tax, and road tax.

Q. The tax for these various funds remain unpaid for that year?

A. Yes, sir.

Q. State whether or not your township has organized under township organization.

A. Yes, sir.

Q. When was it organized?

A. In 1882 it took effect.

Q. Has been operating under the law ever since?

A. Yes, sir.

Q. You may state what company was operating this railroad during 1882.

A. The C., B. & K. C.—the Chicago, Burlington & Kansas City Railway Company.

Q. You may turn to the taxes of 1883 and state what funds there have been paid.

A. Railroad tax of the county and school tax.

Q. State what funds remain unpaid.

A. State revenue taxes, county revenue, and township fund.

24 Q. Are there any town or city taxes there?

A. No, sir.

Q. Are there any in 1882?

A. No, sir.

Q. State during 1883 what company was operating this road.

A. The same—Chicago, Burlington & Kansas City.

Q. That is the tax-book that was delivered to you as collector?

A. Yes, sir.

Cross-examination by L. T. HATFIELD:

Q. What is the special tax that you refer to there? What is that for?

A. It is levied for the purpose of paying the back indebtedness of the county that was created previous to 1881.

Q. Back county indebtedness?

A. Yes, sir.

Q. It was a county revenue tax?

A. Yes, sir.

Q. Mr. Guffey, I believe you stated there were no municipal taxes against the company?

A. No, sir.

Q. State if the officers of the company have not offered to pay if there were any municipal taxes?

A. Yes; two or three different times they have offered to pay it if there was any taxes of that sort.

Q. It is the State tax and the county revenue tax proper that they refuse to pay, is it?

A. Yes, sir.

Redirect examination by Mr. HUSTON:

Q. What did they do about the township tax?

A. They refused to pay that for one year. One year they paid the township tax.

Q. What year did they pay for—1882 or 1883?

A. It appears on the tax-books for 1881.

Q. It is not either of these two years?

25 A. No, sir.

Q. There is township tax due for both of these years?

A. Yes, sir.

Q. Mr. Guffey, that special tax the Major was asking about—was not that tax to pay part of the indebtedness to pay for the bonds issued to this railroad?

A. I think not.

Q. It was a special order levy of the circuit court?

A. Yes, sir.

Witness excused.

The plaintiff then read in evidence the warrant and certificate of the county clerk of Putnam county, Missouri, attached to the said railroad tax-book for each of the years 1882 and 1883, and also read in evidence in said book the amount of State, county, special county, road, and township taxes levied upon defendant's property in said county for said years.

Plaintiff rests.

Whereupon defendant offered the following testimony:

Defendant's Evidence.

Def't offers in evidence the charter of the St. Joseph & Iowa Railroad Company, approved January 22d, 1857.

Charter of St. Jr. & Iowa R'y Co.

The St. Joseph and Iowa Railroad Company was organized under and in pursuance of an act of the Legislature of the State of Missouri, approved January 22d, 1857, which, and the acts amendatory thereof, and upon which it is predicated, are as follows:

26 An act to incorporate the St. Joseph and Iowa Railroad Company.

§ 1. St. Joseph and Iowa Railroad Company; capital stock of two millions; may hold, buy, and sell real estate.
2. Corporators named; shall meet and organize; shall cause books to be opened.
3. Shall have power to locate and construct a railroad; shall be governed by act to incorporate the Hannibal and St. Joseph railroad, approved February 16, 1847, and amendments thereto.
4. General powers and privileges of said company.
5. Dividends of profits shall be made annually.
6. Counties may take stock in said road or invest certain funds in the same; may issue bonds to pay the same, etc.; may appoint agent.

Be it enacted by the General Assembly of the State of Missouri as follows:

§ 1. A company is hereby incorporated called "The St. Joseph and Iowa Railroad Company," and by the same title the stockholders shall be in perpetual succession, with a capital stock of two millions of dollars, which may be increased to the sum of five millions, if deemed necessary, the same to be divided into shares of one hundred dollars each. They may sue and be sued, plead and be impleaded, defend and be defended against, and may make and use a common seal, and shall be able in law and equity to make contracts; may take, hold, possess, and enjoy the fee-simple or other title in and to any real estate, and may sell and dispose of the same, and may make by-laws, rules, and regulations proper for carrying into effect the provisions of this act, not repugnant to the Constitution or laws of the United States or of this State, and shall have the usual and necessary powers of companies for such purposes.

§ 2. John Corby, Milton Tootle, Thomas Henry, Jonathan Levy, William K. Richardson, and William Ridenbaugh, of Buchanan county; J. N. Shambaugh, of De Kalb county; Thomas Pannel, of Andrew county; John B. Hundley and George W. Lewis, of Gentry county; John D. Williams and John P. Lutz, of Daviess county; M. K. Howell, of Harrison county, and John R. Clark, of Mercer county, or any nine of them, shall constitute the first board of directors under the provisions of this act, and shall hold their offices until their successors shall be qualified. They shall meet at such times and places as shall be designated by any three of them and organize. They shall cause books to be opened for the subscription of capital stock of said company at such times and places as they

may designate under the supervision of such persons as they may appoint, and may continue them open so long as they may deem proper, and may reopen such books when necessary until the whole stock shall be subscribed.

§ 3. Said company shall have full power to survey, mark, locate, and construct a railroad from the city of Saint Joseph, in the county of Buchanan, to such point on the boundary line of this State as they may select, and may extend the same to such point or points in the State of Iowa as they may deem proper, and shall, in all things, be subject to the same restrictions and be entitled to all the rights, privileges, and immunities which were granted to the Hannibal and Saint Joseph Railroad Company by an act entitled "An act to incorporate the Hannibal and Saint Joseph Railroad Company," passed at the session of the General Assembly and approved February 16, 1847; and also of the amendments to the charter of said Hannibal and Saint Joseph Railroad Company passed at the sessions of the General Assembly and approved February 23, 1853, and February 24, 1853, and March 3, 1855, so far as the same — applicable to the company hereby created (and not inconsistent with the powers hereby conferred), as fully and completely as if the same were herein re-enacted.

SECTION 4. The company shall commence the construction of said road within eight years, and shall complete the same within sixteen years thereafter, and said company shall have general powers to use, manage, control, and enjoy said road; shall determine what the width of *guage* between the rails may be,
and what kind of carriage may be used thereon, and
27 by whom and in what manner, and shall determine the times,
condition, and manner in which merchandise, property, and passengers shall be transported thereon, and shall have power to keep up such turn-outs, gates, bridges, culverts, toll-houses, depots, warehouses, causeways, and other buildings, machinery, and other fixtures as may be necessary, and shall receive such tolls and freights as may be determined on by the directors, and shall keep posted up statements of the rates of toll and freight to be charged.

SEC. 5. Dividends of the profits of said company shall be made annually or oftener if necessary, but the directors may reserve or set apart a portion of the profits as a contingent fund to meet expenditures and losses.

SEC. 6. It shall be lawful for the county court of any county in which any part of the route of said road may be, or for the county court of any county adjoining or near the same, to subscribe to the stock of said company or invest its three per cent. fund or other internal improvement fund or swamp lands or the proceeds thereof belonging to the county as stock in said road, and for the stock subscribed in behalf of the county may issue the bonds of the county to raise
the funds to pay the same, and to take proper steps to pro-
28 tect the interests and credits of the county, and the county
court may appoint an agent to represent the county, vote for it, and receive its dividends. Any incorporated city, town, or incorporated company may subscribe to the stock in said railroad

company and appoint an agent to represent its interest and receive its dividends, and may take proper steps to guard and protect the interests of said city, town, or incorporation.

This act to take effect and be in force from and after its passage. Approved January 22, 1857.

Also the charter of the Hannibal & St. Joseph Railway Company, approved February 16th, 1847.

Charter of H. & St. J. R'y Co.

Be it enacted by the General Assembly of the State of Missouri as follows:

SEC. 1. That Joseph Roubidoux, John Corby, and Robert J. Boyd, of St. Joseph, in Buchanan county; Samuel J. Harrison, Zachariah G. Draper, and Erasmus M. Moffat, of the city of Hannibal; Alexander McMurtry, of Shelby county; George A. Shortridge and Thomas Sharp, of Macon county; Wesley Halliburton, of Linn county; John Graves, of Livingston county; Robert Wilson, of Daviess county; George W. Smith, of Caldwell county, and
29 all such persons as may hereafter become stockholders in the said company shall be, and they are hereby, created a body corporate and politic in fact and in name by the name and style of the "Hannibal and St. Joseph's Railroad Company," and the same title the stockholders shall be in perpetual succession, and be able to sue and be sued, implead and be impleaded, in all courts of record and elsewhere, and to purchase, receive, have, hold, and enjoy to them and their successors lands, tenements, and hereditaments, goods, chattels, and all estates, real, personal, and mixed, of what kind or quality soever, and the same from time to time to sell, mortgage, grant, alien, and convey, and to make dividends of such portion of the profits as they may deem proper, and also to make and have a common seal, and the same to alter or renew at pleasure, and also to ordain, establish, and put in execution such by-laws, ordinances, and regulations as shall appear necessary and convenient for the government of said corporation, not being contrary or repugnant to the Constitution and laws of the United States or of the State of Missouri, and generally to do all and singular the matters and things which to them it shall lawfully appertain to do for the well-being of said corporation and the due management and
30 ordering of the affairs of the same: Provided always, That it shall not be lawful for the said corporation to deal, or use, or employ any part of the stock, funds, or money in buying or selling any wares or merchandise in the way of traffic or in banking or brokering operations.

SEC. 2. That the capital stock of said corporation shall be two millions of dollars, divided into twenty thousand shares of one hundred dollars each, and it shall be lawful for said corporation, when and so soon as in the opinion of the individuals named in the foregoing section a sufficient amount of stock shall have been taken for that purpose, to commence and carry on their said proper business

and railroad operations under the privileges and conditions herein granted.

SEC. 3. That the said company are hereby authorized and empowered to cause books for the subscription stock to be opened at such times and places as they may deem most conducive to the attainment of the stock required.

SECTION 4. The said company shall have power to view, lay out, and construct a railroad from St. Joseph, in Buchanan county, to Palmyra, in Marion county, and thence to Hannibal, in said county of Marion, and shall in all things be subjected to the same restrictions and entitled to all the privileges, rights, and immunities which were granted to the Louisiana and Columbia Railroad Company by an act entitled "An act to incorporate the Louisiana and Columbia Railroad Company," passed at the session of the General Assembly in 1836 and 1837, and approved January the 27th, 1837, so far as the same are applicable to the company hereby created, as fully and completely as if the same were herein re-enacted.

31 SEC. 5. Nothing in this act, nor in that to which it refers shall be construed so as to allow said company to hold or purchase any more real estate than may be necessary and proper for the use of the road and the business transacted thereon.

This act to take effect and be in force from and after its passage. Approved February 16, 1847.

Also act approved February 23d, 1853, to amend the charter.

Also an act supplemental to the act entitled an act to -corporate. Approved February 24, 1853.

Also an act to amend an act entitled an act to incorporate the Hannibal & St. Joseph Railway Company, approved March 3d, 1855.

Also an act incorporating the Louisiana & Columbia railway, approved January 27, 1837, in words and figures following, to wit:

Louisiana and Columbia Railroad.

An act to incorporate the Louisiana and Columbia Railroad.

	Sec.
Company incorporation	1
Capital stock	*ib.*
First board of directors	2
Books for subscription	*ib.*
Directors, election of	3, 4
President	4
Powers of directors and duties	5
Payment of stock	6
Powers of company	7
Persons refusing to relinq. lands—proc'd'gs	8
Viewers, oath of & duties	9
Damages, payment of	10
Powers of company	11
Commencement & com. of road	12
Cars, carriages, vehicles, &c.	13

Sec.
Tolls and freights ---------- 14
Dividends ---------- 15
County courts may subscribe for stock ---------- 16
Justices may vote for county ---------- 17
Annual exhibits of affairs ---------- 18
Transportation of troops & mun. of war ---------- 19
Plat of road shall be fil-d in office of sec. state ---------- 20
Scire facias may issue, when ---------- 21
Road suffered to decay ---------- 22
Record of expenses in making road ---------- 23
Powers, privileges, etc., when invested in stockholder ---------- 24
Injuring road, penalty for ---------- 25

32 Be it enacted by the General Assembly of the State of Missouri as follows:

SEC. 1. There shall be incorporated a company, to be called the Louisiana and Columbia Railroad Company, the capital stock whereof shall be one million dollars, or so much as may be necessary to execute the objects of said company as hereinafter provided, to be divided into shares of one hundred dollars, the holders whereof, their successors or assigns, shall constitute and be a body corporate and politic by the name and style aforesaid, and by that name shall have perpetual succession, may sue and be sued, plead and be impleaded, defend and be defended, in any and all courts of justice whatever; may make and use a common seal, and the same alter or renew at pleasure; shall be able in law and equity to make and enforce all kinds of contracts; may take, hold, use, possess, and enjoy the fee-simple or any other title or estate in any real estate, lands, tenements, or hereditaments, and the same to sell and dispose of at pleasure; may make such by-laws, rules, and regulations as may be necessary or proper for the carrying into effect the provisions and true intent and meaning of this act not repugnant to the Constitution or laws of the United States or of this State.

SEC. 2. Adam B. Chambers, Michael Reynolds, Isaac Herrick, Phineas Block, and John S. McCune, of Pike county; and William Cornelius, Sinclair Kirtley, Richard Gentry, and David M. Hickman, of Boone county, or a majority of them, shall constitute the first board of directors under this act, and shall hold their office until their successors are duly elected and qualified; and if any of the persons herein named decline, refuse, or fail to act, the residue may appoint some suitable person or persons to fill the vacancy. The directors herein named shall meet at such time and place as may be designated by a majority of them and organize themselves into a board of directors. The directors when organized shall cause books to be kept open for the subscription of the capital stock
33 at such times and places as they may designate and under either the supervision of one or more of the directors, or such other persons as they may appoint; said books *they* may be reopened for further subscriptions to the stock as often and at such

places and under the supervision of such persons as any board of directors may deem proper until the whole amount is taken up.

SEC. 3. As soon as one thousand shares shall have been subscribed, the directors shall cause an election to be held for the election of nine directors, at such time and place as they may designate, having first given public notice thereof in one or more public newspapers printed in the State.

SEC. 4. An election shall be held on the first Monday of November in every year after the first election, for nine directors for said company; in the event of failure to hold such election this charter shall not for that reason be forfeited or vacated, but an election shall be held at such other time as the directors may designate; said elections shall be by ballot and under the supervision of one or more of the stockholders, who shall be sworn, and the persons having the highest number of votes elected.

Every stockholder shall be entitled to one vote for each share by him held, and any stockholder not present may vote by proxy in writing duly executed to the person wishing to vote; but no director shall be at liberty to act as proxy for any stockholder. No person shall be eligible to the office of director unless he be at the time of his election a stockholder in said company; and if any director shall at any time after his election cease to be a stockholder his office shall be thereby vacated.

The directors shall hold their office for one year after their election and until their successors are elected and qualified. They shall meet within a reasonable time after their election and choose from their number one who shall act as president, who shall hold that office for the term for which he was elected director.

SEC. 5. The directors elected shall receive from the directors appointed by this act all the papers and books belonging to the company. The directors shall have power from time to time to appoint agents, clerks, treasurer, engineers, superintendents, artists, and all such other officers and persons necessary or proper to carry into effect the object of this act; they shall keep a journal of their proceedings, in which shall be entered all by-laws, rules, and regulations made by the board, and all orders for the payment of money; and any
34 one member of the board may require the ayes and nays to be entered thereon upon any vote given by the board, which journal shall be signed by the president. The directors may designate by the by-laws what number of their body shall constitute a board to do business; they may appoint committees from their own body. In the absence of the president they may appoint a president *pro tem.*, who, shall for the time of his appointment have the powers of the president; they may fill all vacancies which may occur in their body, and the person thus appointed shall hold his office until the next general election; they may fix the salaries of the president and all other persons employed by them, but no director shall receive any compensation for his services as director; they may prescribe the manner of transferring the stock on the books of the company, and may take from persons employed security for the faithful discharge of their duties; may prescribe the manner in

which all notes, bonds, bills, or contracts shall be signed or attested; shall have power to issue the bills and other evidence of the debt of the company, but they shall not issue any bill or note or other thing for the purpose of circulating in the community nor shall they in any way exercise any banking rights or privileges.

SEC. 6. The directors shall have power to call for such portions of the stock subscribed, not exceeding thirty per cent. on each share in every six months, as they may think proper by first giving sixty days' notice of the amount, time, and place of payment in the public newspapers printed in the counties through which the road is to pass, or by written notice to the stockholders; and if any stockholder shall refuse or neglect to pay such requisition within five days after the time appointed for the payment, the company may bring suit against such delinquent and recover the amount thereof, with two per cent. interest per month thereon; and if the amount cannot be collected on execution, or if such delinquent shall not reside in the State, the directors may within six months thereafter, by an order on their books, declare the stock of said delinquents to be forfeited to the company, together with all payments made thereon, and the stock thus forfeited may be sold by the directors; no delinquent shall be allowed a vote at any election, or otherwise participate in the benefits of the company, until he has fully paid all sums and interests due as aforesaid.

SEC. 7. The company, by their agents or directors, shall have full power and authority from time to time to examine, survey, mark, and locate the route for a railroad for a single and double track, the same not to be more than one hundred feet wide, commencing in the town of Louisiana, in the county of Pike, and from thence through Bowling Green, in the same county, to the town of Columbia, in the county of Boone, with full power in all cases to diverge from a direct line whenever in their opinion the interests of the company may require it. They shall have power to extend branches from the point of commencement, in said town of Louisiana, to any other part of said town; also to extend a branch or branches of said road into or through the town of Clinton, in the same county. They shall also have full power and authority to make any other branches along said road or at the termination thereof as they may deem necessary or the public convenience require. They shall have full power and authority to extend said road from the town of Columbia or from some other point along said road, as they may deem best, to the town of Rocheport, in said county of Boone.

§ 8. In all cases where any person through whose lands said road or any branch thereof may run shall refuse to relinquish the quantity aforesaid, or when no contract can be made with the owner thereof, either on account of the absence of such owner, or being an infant or of unsound mind, or a married woman, or from any other cause whatever, it shall be lawful for the company to give notice thereof to the judge of the circuit court within which the lands lie, and it shall be the duty of the judge thereupon to appoint three dis-

creet disinterested men, citizens of the county, to examine and view said lands upon a day to be by said viewers designated, at least ten days' notice of the time of making said view shall be given to the owner of such lands if a resident of the county; if not a resident of the county notice shall be served upon the tenant residing on the land, and if the owner is not a resident of the county and no tenant is residing on the land notice shall be given by an advertisement in some newspaper in or nearest to the county in which the lands lie. In the case of any lands belonging to any married woman notice shall be served upon her husband; in the case of infants or persons of unsound mind notice shall be served on the guardian of such infant or persons of unsound mind, and where there is no guardian of such persons the judge shall appoint some suitable persons to act in their behalf.

§ 9. The viewers appointed by this act shall severally, before entering upon the duties of their appointment, take and subscribe an oath faithfully and impartially to discharge the duties of their appointment, and particularly to honestly assess the damages, if any there are, which the construction of the road will do to the lands of such owner, taking into their estimate the advantages as well as the disadvantages the said road may be to the same. It shall be the duty of said viewers to go upon said land and examine the same and report what damages, if any, will be done to said lands or any building or appurtenance thereon, which report shall be accompanied with a plat of the land viewed and returned in the office of the clerk of the circuit court of the county, and the clerk shall file the same and enter judgment on the records of the court for the amount thereof, which shall be final and conclusive between the parties unless they shall file in writing with the clerk within five days after making the view their objections to the same; and whenever any objections shall be thus filed it shall be, the duty of the judge to examine the same as soon thereafter as may be either in vacation or term time, and may hear testimony thereon, and if the judge shall find the objections sufficient and legal, he shall order a review by three other viewers, who shall proceed in the same manner as is hereinbefore provided, but not more than one review shall be granted to the same person; and if the judge shall find said objections not to be just or sufficient he shall direct judgment to be entered according to the report. In all cases the clerk shall not enter judgment until the five days for filing objections shall have elapsed.

§ 10. All damages assessed by the viewers in the manner herein provided shall be paid to the owner or his legal representative; but if the owner shall be absent or have no representative entitled to receive the damages the same shall be paid into the county treasury subject to the order of the owner. Whenever the company shall file in the office of the clerk of the circuit court the receipt of the person entitled to receive the same for the amount of the damages thus assessed the fee-simple interest and title in the land mentioned in the report shall pass and be vested in the said company as fully and completely as if deeds of conveyance had been executed there-

for: Provided, That in all cases when the company shall have tendered to the owner of any lands, and before any proceedings are had, as in the three last sections are provided, a sum equal or greater than the damages assessed, and the same shall be refused, the party so refusing shall pay all costs attending the assessment of such damages. In all other cases the costs shall be paid by the company.

§ 11. The company shall have full power and authority to build said road along or across any State or county road and the
37 streets and wharves of any town or village, whether corporate or otherwise, and over any public stream or highway; but before such right shall vest in said company they shall apply to the county court of the proper county for such right, and having filed in the office of the recorder a plat of said road and the manner in which it is proposed to cross said roads or streets or other public way, and if the county court are satisfied that no great injury will be done to the public, they may, by an order of said court, give the right to said company to use the same for that purpose. Whenever any county or State road shall cross said railroad it shall be the duty of the company to keep good and sufficient causeways for crossing the same, and whenever said railroad shall run along any street or wharf the same shall be so constructed as not to hinder or prevent the public from using the same. When any person shall own lands lying on both sides of said road said company shall, when required, make and keep in good repair one cross-way for the use of the owner of said lands and other persons.

SEC. 12. The company shall commence the construction of said road within three years from the passage of this act, and may from time to time construct so much thereof as may be within the
38 ability of the company, and shall complete the same within ten years from the time of commencement. If said road shall not be completed within the time aforesaid, then and in that case all the rights, privileges, and benefits granted or conferred by this act shall be extended to and invested in said company to such part of said road as shall have been completed.

SEC. 13. It shall be lawful for said corporation to place on or prescribe the kind of carriages that may be used on said road, and by whom used, and whether propelled by steam or other power for the transportation of passengers, goods, wares, and merchandise of all kinds, and also all kinds of produce, lumber, or other articles usually transported on such roads. For this purpose said company may construct said road *which* such turnouts, gates, bridges, culverts, tollhouses, warehouses, and other things or devices as may be considered necessary or to the interest of the company. All cars, carriages, or other vehicles for the conveyance of any of the things aforesaid on said road shall be subject to the direction of the company, and no person shall put any carriage or vehicle for conveyance or transportation as aforesaid on said road without permission of said company.

39 SEC. 14. The company may charge and receive such tolls and freights for the transportation of persons, commodities, or carriages on said road or any part thereof, or any bridge con-

nected therewith, as shall be to the interest of the same; such tolls shall be established by the directors, and may from time to time be altered. They may charge tolls and freights on any part of the road that is in a sufficient state for travelling on, whether the rails be laid or not. The company shall at all times keep posted up in some conspicuous place at each toll-house a list of the rates of toll and freight. If the company shall at any time refuse or fail to transport within a reasonable time any goods, wares, or merchandize delivered at the proper place, the toll or freight whereon have been paid or tendered to the company or their agent, they shall be liable to the party injured in double the amount of such tolls or freight, besides private damages for the detention, to be recovered in any court of competent jurisdiction.

SEC. 15. Semi-annual dividends of so much profits as the directors may deem expedient shall be made on such days as the directors may determine, and pay to the stockholders as soon thereafter as can with convenience be done; but no dividend shall be made to a greater amount than the net profits after deducting all expenses. The directors may reserve such portion of the profits as a contingent fund to meet subsequent expenditures as they may deem proper; but no dividend shall be made of more than twenty per cent. per annum on the capital paid in.

§ 16. It shall be lawful for the county courts of the respective counties on said road to subscribe for such portions of the stock of said company as they may deem proper, and upon such terms as they may agree with the company. When any county shall have subscribed for any portion of the stock the justices of the county court may issue the notes of the county for such subscription, which shall be signed by all the justices and attested by the clerk, and shall be payable in such times and places as may be agreed upon: Provided, Said notes shall not in any event bear a greater rate of interest than seven per cent. per annum. All proceedings in relation thereto shall be entered on the records of the court.

§ 17. When any stock shall have been subscribed for by the county the justices shall have a right to vote on behalf of the county at any election, and they may, at any time, require of the directors information concerning the affairs of the company.

§ 18. At every annual election the directors shall lay before the stockholders present an exhibit of the affairs and condition of the company. Any number of the stockholders owning one-fifth of the stock subscribed may call a meeting of the stockholders by giving at least two weeks' notice in two or more newspapers printed in the State, specifying the object of the call; and if a majority of the stockholders are present or represented they may make such order, touching the concerns of the company, as a majority may determine: Provided, That said majority of stockholders must also embrace a majority of the shares subscribed.

§ 19. This State and the United States shall have the right, in time of war, to use said road for the transportation of troops or munitions of war in preference to all persons.

§ 20. When said road is located the company shall cause a plat

thereof to be made out and filed in the office of the secretary of state, and the Legislature may, at any time, require a statement from the company as to the progress of the work, the amount of business, and the receipts thereon.

§ 21. Any person interested may, at any time when he believes this charter has been violated, make complaint under oath to any circuit court in any county in which any part of said road lies, and thereupon the court may issue a *scire facias*, specifying particularly the violations complained of; and if, upon the trial thereof, by a jury or otherwise, said charter shall be found to have been violated, the court may appoint trustees to take charge of the affairs of said company, and the charter privileges shall from that time cease.

§ 22. If said road, after its completion, shall be suffered to go into decay, or be impassable for the space of one year, unless when the same is repairing, this charter shall be taken and considered as forfeited.

§ 23. The company shall cause to be kept a fair record of the whole expense of making and repairing of said road or any part thereof, with all incidental expenses, and also a fair account of the receipts from said road, and the State shall have the right, after the end of forty years, to purchase the stock in said road by paying to the said company so much therefor as it shall be valued at by persons to be mutually chosen on the part of the State and the company. The books of said company shall, at all times, be open for the inspection of any agent of the State appointed by the General Assembly to inspect the same: Provided, also, That the State shall give at least four years' notice to the company of her intention to purchase prior to the time fixed for making the purchase.

SEC. 24. Whenever the aforesaid amount of one thousand shares are subscribed all the powers, privileges, rights, immunities, and benefits conferred or intended to be conferred by this charter shall be invested in the holders of said shares; and when any other portion of the capital stock is subscribed for the same shall be vested in all subsequent subscribers. Every person who shall cease to be a shareholder shall also cease to be a member of said company, and the stock of said company shall be exempt from all State and county taxes.

SEC. 25. If any person shall wilfully and knowingly injure or obstruct said road or any part thereof, or shall break, destroy,
41 or deface any work, edifice, device, toll-house, warehouse, or other thing belonging to the company, such person so offending shall, upon conviction, be adjudged guilty of a misdemeanor, and may be punished by fine not less than fifty dollars, or confinement in the State prison not less than six months, in the discretion of the jury; and if life be lost by such wilful obstruction or hindrance, then such offending person shall be guilty of murder, and punished accordingly. Such offending person shall also be liable to pay the company double damages for all injuries sustained by reason thereof.

This act to take effect and be in force from and after its passage.

Approved Jan. 27, 1837.

Def't offers An act to amend the charter of the St. Joseph & Iowa Railway Company, approved Nov. 5, 1857, in words and figures following, to wit:

Act Amending Charter St. Joseph & Iowa R'y Co.

An act to amend the charter of the St. Joseph and Iowa Railroad Company.

§ 1. Company authorized to receive and dispose of donations, lands, etc.
2. Subscriptions for capital stock in lands, lots, etc., authorized.
3. Authorizes company to pledge road, stock, machinery, etc.
4. Deeds of said company to be signed; by whom.

Be it enacted by the General Assembly of the State of Missouri as follows:

§ 1. Said company are hereby authorized to receive donations in lands, lots, houses, or other valuable thing, and to sell or otherwise dispose of and convey the same in such manner as the directors may direct for the benefit of said corporation.

§ 2. Said company are hereby authorized to receive subscription to the capital stock of said road in lands, lots, houses, and other valuable thing, at such valuation as may be agreed upon with the party or parties making such subscriptions, and the said company are hereby authorized to sell, dispose, mortgage, or pledge such lands, lots, houses, or other valuable thing in such manner as the directors may think proper to raise money or materials to construct, equip, and operate said road.

§ 3. For the purpose of further enabling said company to construct, equip, and operate said road they are hereby authorized to pledge the said road, rolling-stock, machinery, depots, depot-houses, and any other property they may possess, together with the franchise of said road, for the liquidation of any indebtedness said railroad company may incur in the construction of said road.

42 § 4. All deeds for the conveyance of real estate of said company shall be signed by the president of said company and attested by the secretary, with the corporate seal attached, which shall be deemed and held a sufficient execution, authentication, and acknowledgment of such deeds in all courts and elsewhere.

This act to take effect and be in force from and after its passage.

Approved November 5, 1857.

Def't offers An act to amend an act entitled "An act to incorporate the St. Joseph and Iowa Railroad Company, to extend the time for the construction of said road, and to facilitate the construction of the same," approved March 19th, 1866, in words and figures following, to wit:

§ 1. New board of directors constituted; powers and privileges of the board.
2. Board; how organized.

3. Board may cause assessment upon stock of company; notice of such assessment to be published.
4. Construction of said road to commence; when.
5. Company may construct road and make connections; in what manner.
6. Section 4 of act of incorporation repealed.
7. Act; when to take effect.

Whereas the board of directors of the St. Joseph and Iowa Railroad Company, organized as provided by the charter of said company, opened books for subscription to the capital stock of said company, made surveys for said road, and commenced the transaction of its business, but were prevented (by the rebellion intervening) from completing said road as required by the terms of said charter; and whereas the majority of said board of directors having failed to take the oath of loyalty, as required by the constitution and laws of the State of Missouri: Therefore, to secure the completion of said road—

Be it enacted by the General Assembly of the State of Missouri as follows:

§ 1. The charter of the St. Joseph and Iowa Railroad Company, approved January 22d, 1857, be, and the same is hereby, amended as follows: That John Severance, Francis Rodman, P. A. Thompson, Josiah Coleman, Thornton Fakes, William Albir, Elwood Kirby, and Henry Baker shall constitute the board of directors of said company. They shall hold their offices until their successors are qualified, and they shall determine by by-laws what number of directors shall constitute a quorum. The rights, privileges, and immunities that belong to or are vested in the board of directors by virtue of the act to which this act is amendatory, not inconsistent with this act, together with the property, rights, and credits of said corporation created by said act, shall be vested in and shall belong to the board herein named, and their successors in office, and they shall have power to hold the books and papers of such corporation.

§ 2. Said board of directors, or a majority of them, shall meet in person or by attorney and organize said board at such time and place as any three of their number shall determine, by first giving notice of said meeting by publication of the same in some newspaper published in the city of St. Joseph at least twenty days before the day of such meeting.

§ 3. Said board of directors shall cause an assessment of such sum as they may determine upon all the stock of said company heretofore subscribed upon which no greater sum than five per cent. has been paid, and notice of said assessment shall be given in some newspaper published in the city of St. Joseph for at least twenty days; and the holders of said stock failing to pay said assessment as aforesaid, said stock shall be forfeited to the company.

§ 4. Said company shall proceed with the construction of said road within ten years after the approval of this act, and shall complete the same within twenty years thereafter.

§ 5. Said company shall have authority to construct said road so

as to connect with any road or roads in this State or the State of Iowa, and for that purpose may make their road with as many rails and of such gage as they may determine.

SEC. 6. Section four (4) of the act to which this act is amend-
43 atory, approved January 22nd, 1857, is hereby repealed.

SEC. 7. This act to take effect and be in force from and after its passage.

Approved March 19th, 1866.

Remarks by S. P. Huston, Pl'ff's Att'y.

HUSTON: I suppose the objection can be made to the force of these papers at the end of the trial. I do not care to make objections as we go along. Of course, it is pertinent as far as it goes. The effect will be another matter. They can read the papers subject to my objection.

Def't offers the resolution of the board of directors of the St. Joseph & Iowa Railroad Company authorizing the construction of the Central North Missouri Branch of the St. Joseph & Iowa Railway Company, adopted at St. Joseph, Missouri, March 25th, 1871, in words and figures following, to wit:

Resolution of Board of Directors, Etc.

OFFICE OF THE ST. JOSEPH AND IOWA RAILROAD COMPANY,
ST. JOSEPH, BUCHANAN COUNTY, MISSOURI, *March* 25, 1871.

At a regular meeting of the board of directors of the St. Joseph and Iowa Railroad Company this day held, pursuant to adjournment, at their office in the city of St. Joseph, the following directors being present, John Severance, James A. Matney, William Z. Ransom, James H. R. Cundiff, Wm. M. Albin, S. A. Young, and Thomas B. Weakly, constituting a quorum under the by-laws of the company, the following proceedings were had, as appears by the records of said company in its office, to wit:

James H. R. Cundiff offered the following preamble and resolutions, which were duly seconded and unanimously adopted:

Whereas, the St. Joseph and Iowa Railroad Company, authorized by law to build branches, deem it necessary and required by public interest to build a branch railroad through the central part of North Missouri and thence southward; Therefore, be it—

Resolved, That we desire to avail ourselves of the provisions of an act passed by the General Assembly of the State of Missouri entitled "An act to aid the building of branch railroads in the State of Missouri," approved March 21, 1868. Said branch railroad to be designated and known as the Central North Missouri Branch of the St. Joseph and Iowa railroad.

Said branch railroad to be built from a point of intersection with the main line of the St. Joseph and Iowa railroad at or near the town of Unionville, in the county of Putnam, in the State of Missouri, and running thence southwesterly through the county of

Putnam, the county of Sullivan, and the county of Linn, and the town of Linneus, in said Linn county, and thence to Carrollton, in Carroll county, and thence to the Missouri river at a point at or east of the city of Lexington, in Lafayette county, and from thence to such point in Southwest Missouri as may be hereafter determined by the board of our directors of our said company.

44 Second. Resolved, That the president of the company be, and he is hereby, directed to file a copy of these resolutions with the secretary of the State of Missouri, duly certified as required by law.

STATE OF MISSOURI, } ss:
County of Buchanan, }

I, John Severance, president of the St. Joseph and Iowa Railroad Company, a corporation duly organized under the laws of this State, and authorized by law to build branches, do hereby certify that the within and foregoing preamble and resolutions are a true and perfect copy of the same as they appear on the records of said company.

In testimony whereof I have hereunto set my hand and caused the seal of said company to be hereto affixed this 25th day of March, 1871, at the office, in the city of St. Joseph, Mo.

[SEAL.] JOHN SEVERANCE,
President St. Joseph and Iowa Railroad Co.

Attest: JAMES A. MATNEY, *Secretary.*

Filed April 19, 1871.

EUGENE F. WEIGEL,
Sec'y of State.

Attached to the foregoing resolution is the following certificate in words and figures following, to wit:

STATE OF MISSOURI, ss:

I, Michael K. McGrath, secretary of State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of the resolution of the St. Joseph and Iowa Railroad Company, authorizing the construction of the Central North Missouri Branch of the St. Joseph & Iowa railroad, filed April 19th, 1871, as the same appears on file and of record as the law directs in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Missouri. Done at office, in the city of Jefferson, this nineteenth day of August, A. D. eighteen hundred and eighty-five.

[SEAL.] MICH'L K. McGRATH,
Secretary of State.

45 Defendant offers an act to aid the building of branch railroads.

Objected to because it is public law.

Defendant next offers the deed from the St. Joseph & Iowa Railroad Company to the Burlington & Southwestern Railroad Company, which is in words and figures following, to wit:

Deed of St. Jo. & I. R. R. to B. & S. W. R'y Co.

This indenture, made and entered into this 23d day of May, A. D. 1871, by and between the St. Joseph and Iowa Railroad Company, of the first part, and the Burlington and Southwestern Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, of the second part, witnesseth:

That whereas the said party of the second part is duly organized and authorized by the laws of the State of Iowa to construct and operate a railroad in said State, and to extend the same into the State of Missouri; and whereas the said party of the second part have located the line of railroad to a point on the boundary line of the States of Iowa and Missouri, on the most practicable route between Moulton, in Appanoose county, Iowa, and Unionville, in Putnam county, Missouri; and whereas said second party are desirous of extending their line of road into the State of Missouri, and on the most practicable route from said Unionville, in said Putnam county, to St. Joseph, in Buchanan county, and to build and operate their said road upon said line; and whereas the said party of the first part, a company duly incorporated by an act of the General Assembly of the State of Missouri entitled "An act to incorporate the St. Joseph and Iowa Railroad Company," approved January 22, 1857, and an act amendatory thereto passed March 19, 1866, are authorized to survey, mark, locate, and construct a railroad from the city of St. Joseph, in Buchanan county, Missouri, to such point on the boundary line of the State, between said States of Iowa and Missouri, as they may select; and whereas the board of directors of said first party have selected the same point on said boundary line of said States as the point on said State line to which they will extend their line which has been selected and determined upon by said party of the second part, and have determined to locate their said line upon the most practicable route between the said city of St. Joseph and the said point on said boundary line aforesaid; and whereas the lines of said parties connect at the said point on said State line, and make one continuous and connected line of railroad from the city of Burlington, in the State of Iowa, to the said city of St. Joseph, in the State of Missouri; and whereas it is deemed to the interests of both companies that the entire line aforesaid should be built, owned, and operated as one line and by one company; and whereas the said second party have already constructed a portion of their road in the State of Iowa, and are engaged in building the same westerly towards the point on said boundary line of said States aforesaid, and are desirous of extending the same into the State of Missouri to said town of Unionville, and thence, on the most practicable route, to the city of St Joseph and upon the line aforesaid, and are desirous of acquiring the rights

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and franchises owned and held by said first party, and of building their road into the State of Missouri under and in pursuance of the charter rights and privileges so owned by said first party; and whereas it is to the interests of all the parties that said road should be built as early as possible, and it is believed the same will be facilitated by such transfer:

Now, therefore, know all men by these presents that, in consideration of the premises and the sum of $50,000 in hand paid by said second party, and for other good and sufficient considerations, and in order to effect the objects and purposes aforesaid, the said party of the first part, in pursuance of the authority of the board of directors of said company and of the written consent of the stockholders thereof, as required by law, do hereby give, grant, bargain, sell, convey, and confirm unto the said party of the second part, their successors and assigns, forever, all and singular the railroad and other property of said party of the first part situated and being in the State of Missouri, acquired and to be acquired, together with all the rights, privileges, franchises, powers, and authority owned or held by said first party under and by virtue of its said charter and the amendments thereto, and by virtue of any law of the State of Missouri, with the right to survey, mark, locate, build, construct, and operate the said railroad in the State of Missouri between the termini above mentioned, and in so doing to be subject to the same restrictions and entitled to the same privileges, rights, franchises, and immunities to which the said first party are or would be entitled under like circumstances; and the said first party hereby sells, transfers, and assigns unto said second party all subscriptions of stock, donations, and all township and county aid of any and every kind to which said first party is or may be entitled, or which has been or hereafter may be subscribed to said stock of said first party, with the right to receive, collect, hold, and use the same in the construction of said road in the same manner and to the same extent as said first party are or may be authorized to do, hereby intending to substitute the said second party to every right of property and to all privileges, franchises and immunities in the State of Missouri to which said first party are or may be entitled either in law or equity, or to which they would have been entitled if they had constructed and operated said road as contemplated by said charter, and intending to relinquish to said second party all the rights and privileges aforesaid free from any future claim of said first party.

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U. S. Rev. Stamp, 5c.

It is understood and agreed that the rights and privileges and franchises hereby conveyed are received by said second party in full payment of the stock subscribed by the individual stockholders of the St. Joseph and Iowa Railroad Company to the amount of $50,000, that being the amount hereby agreed to be paid to them as a consideration for this conveyance, and said second party agree to release said individual stockholders from any further demands on account of their subscriptions and to cancel the excess above $50,000.

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It is mutually agreed and understood by and between the parties hereto that such amendments to the articles of incorporation of the said second party are to be procured, so soon as the same can be practically done, as will require one-third of the members of the board of directors of said second party to be residents of the State of Missouri until such time as the road shall be completed to the city of St. Joseph, to be appointed in a manner to be set forth in said articles, and shall hold their offices until their successors are elected and qualified, and until that time the following-named persons shall constitute the members of the board as aforesaid, to wit: John Severance, Thomas B. Weakley, and Jeff Chandler; and in case a vacancy shall occur in the number above mentioned the remainder of the directors first appointed shall nominate a successor, provided the directors herein named shall hold their offices until the road is completed to the city of St. Joseph.

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And it is further understood and agreed that said directors above named shall constitute and be a local executive committee, to whom shall be entrusted, under and subject to the direction and control of the board of directors of said second party, the management of the affairs of said company in the State of Missouri, the right to solicit and procure subscriptions to stock, and to employ proper agents to attend to all matters of business of the company; to make contracts subject to the ratification of the board of directors, to open an office at St. Joseph for said company and to keep the same in pursuance of law, and in a general way to look after the management and interests of the affairs of the company in said State of Missouri, in order to secure their hearty co-operation in building said road and in attaining the objects hereby intended and the faithful execution of the understanding and agreement hereby entered into.

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It is understood and agreed that all official acts necessary to keep the charter of the St. Joseph and Iowa Railroad Company in full force and effect have been done by the board of directors of said company, and if the said second party shall within thirty days become satisfied to the contrary they may, by giving notice to John Severance, president, rescind this agreement.

It is understood and agreed that the said second party will put under contract the grading of fifteen miles of said road northeastwardly from the city of St. Joseph when the said city of St. Joseph or county of Buchanan, in the State of Missouri, shall have subscribed fifty thousand dollars to the capital stock of said second party and when the township of Rochester, in the county of Andrew, shall have subscribed a like amount, said grading to be done under the direction of the engineers of said second party and to be completed within six months after the letting of the contract or as soon thereafter as practicable.

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It is further mutually agreed and understood that said party of the first part shall, in case this instrument shall not be

U. S. Rev. Stamp, 5c. sufficient to invest and clothe the said second party with all the powers, rights, privileges, franchises, immunities, and rights of property hereinbefore mentioned and hereby intended to be conveyed, and said objects may be accomplished in any other legal and proper manner or by any other instruments of writing, said first party will enter into such other articles of agreement, consolidation, conveyance, or other necessary stipulations or writings as said second party may, on reasonable notice, require, and as will be competent to carry out the purposes and intentions of this conveyance, upon the considerations and conditions herein expressed; and also that said party of the first part and all and every person or persons, corporation or corporations, lawfully or equitably deriving any title, estate, right, or interest in or to the property and rights herein granted by, from, under, or in trust for said first party, shall and will at all times hereafter and upon reasonable request of said second party make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually

U. S. Rev. Stamp, 5c. vesting and confirming the premises, rights, franchises, and property hereby granted, or so intended to be, in and to the said party of the second part as *by* the said party of the second part, its successors or assigns, or their counsel learned in the law, may deem reasonable, proper, requisite, or convenient.

It is further understood and agreed that if said party of the second part shall fail to build its railroad to the city of St. Joseph within a reasonable time for the proper accomplishment of such a work, considering the magnitude of the undertaking, or it shall abandon the enterprise, on such event they shall reconvey to said first party all of the property, rights, and franchises hereby sold and conveyed, or the same shall, on the failure to convey, revert to said first party, but no greater right shall revert or be reconveyed than is conveyed by this instrument, and such reasonable time shall not be less than three years from the first day of July, A. D. 1871.

U. S. Rev. Stamp, 5c. In witness whereof the said party of the first part has caused these presents to be signed by its president and attestested by its secretary and its corporate seal to

49 be hereto affixed on the day and year first above written.

[SEAL.] SAINT JOSEPH AND IOWA RAILROAD CO.,
By JOHN SEVERANCE, *President.*

Attest: JAMES A. MATNEY,
Secretary of St. Jo. & I. R. R. Co.

Acknowledgment to Deed.

STATE OF MISSOURI, }
County of Buchanan, } ss:

Appeared before me this 19th day of October, 1871, John Severance, who is personally known to me to be the person represented,

and acknowledges the above signature to be his act and deed for the purposes specified in the foregoing instrument of writing.

Sworn to and subscribed before me this 19th day of October, 1871.

[NOTARIAL SEAL.] N. W. SHERMAN,
Notary Public, Buchanan Co., Mo.

Approval, Etc., of Stockholders.

We, the undersigned stockholders in the St. Joseph and Iowa Railroad Company, ratify and approve the above and foregoing contract.

THOS. B. WEAKLEY,
WILLIAM M. ALBIN,
T. J. CHEW, JR.,
J. L. BITTINGER,
JOHN SEVERANCE,
JEFFERSON CHANDLER,
W. Z. RANSOM,
L. A. YOUNG,
JAMES A. MATNEY.

Recorded [on]pages 27, 28, 29, 30, and 31, Book of R. R. Corporations, vol. II.

Filed and certified copy sent October 20th, 1871.

EUGENE F. WEIGEL,
Secretary of State.

Cert. Sect. of State.

STATE OF MISSOURI, *ss:*

I, Michael K. McGrath, secretary of State of the State of Missouri, hereby certify that the annexed pages contain a true and
50 complete copy of the agreement and conveyance of the St. Joseph and Iowa Railroad Company, to the Burlington and Southwestern Railway Company, filed Oct. 20th, 1871, as the same appears on file and of record as the law directs in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Missouri. Done at office, in the city of Jefferson, this twenty-ninth day of May, A. D. eighteen hundred and eighty-two.

[SEAL.] MICH'L K. McGRATH,
Secretary of State.

Objected to as not properly acknowledged or executed.

Defendant calls further attention to what was done immediately thereunder: "We, the undersigned stockholders in the St. Joseph and Iowa Railroad Company, ratify and approve the foregoing contract."

Deed Admitted Subject to Obj.

COURT: I will admit the deed subject to the objection and examine it.

Defendant offers in evidence the articles of incorporation of the Burlington & Southwestern Railway Company, which is in words and figures following, to wit:

Artcl. of Incor. [*of the*] *B. & S. W. Ry. Co.*

Articles of incorporation of the Burlington & Southwestern Railway Co., as amended July 12, 1871.

51 Art. 1. Under and by virtue of the laws of Iowa, Missouri, Nebraska & Kansas providing for the incorporation and consolidation of railroad companies in said States, respectively, and by virtue of the articles of incorporation of the respective companies hereby consolidated, we, James Putnam, E. D. Rand, John H. Gear, Thomas Hedge, Joshua Tracy, J. Edwin Conant, James A. Alcorn, E. Robinson, and George Schramm, composing the board of directors of the Burlington and Southwestern Railway Company, and J. C. Allen, J. C. Walker, Daniel McCouri, O. Cutler, Robert A. Russell, J. A. Smith, George Schlapp, F. Hesser, and J. M. Beck, composing the board of directors of the Fort Madison, Farmington and Western Railroad Company, do hereby incorporate ourselves and all of the other stockholders of the Burlington and Southwestern Railway Company, of the Fort Madison, Farmington and Western Railroad Company, and also all others who may become members hereof into a body corporate, with all the rights, powers, and privileges granted by the laws of the States aforesaid and these articles.

Art. 2d. The name and style of this incorporation shall be the Burlington and Southwestern Railway Company.

Art. 3d. The principal place of business of this company shall be at Burlington, Iowa.

52 Article 4. The objects of this corporation are to locate, construct, maintain, and operate a railway with double and single tracks, and with all necessary branches, fences, bridges, warehouses, elevators, steamboats, and such other appurtenances as may be deemed necessary for the construction and profitable management of the same, from the city of Burlington, Iowa, in a southwesterly direction, via Fort Madison, in Lee county, and Farmington, in Van Buren county, to a point on the State line, on the most practicable route from Moulton, in Appanoose county, Iowa, to Unionville, in Putnam county, Missouri; thence by way of said Unionville, on the most practicable route, to the city of St. Joseph, in the county of Buchanan, in the State of Missouri, and to such other points in the State of Missouri or Kansas as may be determined upon by the board of directors and consistent with the contract made between this company and the St. Joseph and Iowa Railroad Company, of date May 23, 1871; said line of road to be divided into three divisions: The first, or Iowa division, to comprise all that portion of said line of road between Burlington and the Iowa and Missouri State line, and the second division all that portion of said line of road in the State of Missouri; and any extension of said road into the State of Kansas shall constitute the third division. Recognizing and ratifying the purchase of the charter

and property of the St. Joseph and Iowa Railroad Company, as shown by deed of date May 23, 1871, the said second division in the State of Missouri of said road shall be constructed and operated under and in pursuance of the rights, privileges, and restrictions of said charter and the laws of the State of Missouri.

Art. 5. The capital stock of the company may be twenty millions of dollars, which shall be divided into shares of one hundred dollars each, and at all stockholders' meetings each share of stock shall be entitled to one vote, and such vote may be cast in person or by proxy. The stock may be subscribed for at such times and in such amounts as the board of directors may from time to time determine. Fractional subscriptions shall entitle the subscriber to a fractional proportion of one vote.

Art. 6. This corporation shall date from the first day of January, 1870, and shall continue fifty years, with the right of renewal and of perpetual succession.

Art. 7. The affairs of the company shall be managed by a
53 board of nine directors, one-third of whom shall be residents of the State of Missouri, until the road is completed to the city of St. Joseph. A majority of the board shall constitute a quorum for the transaction of the business of the company.

Art. 8. The officers of the company shall consist of a president, vice-president, treasurer and assistant treasurer, secretary and assistant secretary, and of such other officers, agents, local boards, and executive committees as the board of directors shall deem expedient, all of whom shall be appointed by the *by the* board of directors.

Art. 9. Until the road is completed to Farmington, in Van Buren county, and until their successors are duly elected, the following persons shall constitute the board of directors: J. M. Beck, J. C. Allen, George Schlapp, J. C. Walker, O. Cutler, E. Robinson, George Schramm, James A. Alcorn, E. D. Rand, Thomas Hedge, John H. Gear, Joshua Tracy, James Putnam, and J. Edwin Conant. Until the road is completed to Saint Joseph, in the State of Missouri, John Severance, Thomas B. Weakley, [and] Jeff. Chandler, of St. Joseph, shall be the members of the board of directors in the State of Missouri; and in case a vacancy in said number shall occur the remaining member or members of said number shall fill such va-
54 cancy. On this 12th day of July, 1871, the stockholders shall elect the other six members of the board of directors, who shall hold their offices until their successors are elected and qualified, and annually thereafter, on the second Wednesday in July, a stockholders' meeting shall be held at Burlington, Iowa, for the election of their successors, and if, from any cause, the said meeting shall not be held at the time herein designated, then the president or vice-president may call said meeting to be held at any time after giving thirty days' notice, to be published in some daily newspaper in the cities of Burlington, Iowa, and Saint Joseph, Missouri, and any business may be transacted at such called meetings as could have been at said regular —, and, after the road is completed to Saint Joseph, a full board shall be elected at said meeting.

Any vacancy occurring in the number of directors elected at a

stockholders' meeting, as herein provided and before the road is completed to St. Joseph, shall be filled by the residue or a majority of said six members so elected.

The directors when elected shall appoint from their number a president and a vice-president; they shall also elect a secretary and treasurer, and shall have power to appoint all other officers and agents of the company and to fix their compensation.

55 Art. 10. The board of directors shall have full power and authority to carry out the objects of this corporation; shall have power to fill any vacancy in the board; shall have power to authorize the president, secretary, and treasurer to execute a mortgage or deed of trust on the whole or any part of the property of this company to secure the payment of the bonds thereof, to be executed by them with the coupons attached, signed by the treasurer, in such amounts and upon such terms and conditions as the directors may think best. The directors may prescribe the manner in which the company's road may be used; may regulate the operating and running of trains, and shall have full and exclusive power to regulate fares and rates of toll or tariffs for the transportation of property or passengers over this company's road.

Art. 11. This incorporation shall have power to acquire and hold such property, real as well as personal, as may be necessary or convenient in the proper prosecution of its business.

Art. 12. All certificates of stock, contracts, agreements, and bonds shall be signed by the president and secretary, or such other officer or officers as the board of directors may designate. All transfers of stock to be valid against the company shall be made upon the

56 books of the company in accordance with the rules and regulations prescribed therefor by the board of directors.

Art. 13. The aggregate indebtedness of the company shall in no case exceed two-thirds of the capital stock authorized by these articles.

Art. 14. The private property of stockholders shall not be subject to the debts of the company.

Art. 15. Treasurers shall be required to give bond, to be approved by the directors, as security for the faithful performance of their duties.

Art. 16. Special meetings of the stockholders and all meetings of the directors may be called in such manner as shall be prescribed by the by-laws.

Art. 17. The board of directors may call for installments upon stock to be paid at such times and places as they may direct and such notice thereof must be given as they in their by-laws prescribe. If such installments are not promptly paid the board of directors may declare the delinquent shares forfeited or collect the installments thereon by law.

Art. 18. These articles, except those herein declared as unalterable and absolute, may be at any time changed by the consent of the whole board of directors or they may be changed by a vote of the stockholders at any general or special meeting; notice being

57 given to the stockholders ten days before such meeting by

publication in some newspaper published at Burlington, Iowa, that amendments to said articles will be proposed at said meeting.

Art. 19. The board of directors by a vote of three-fourths of their whole number shall have authority to merge and consolidate this company with any other railroad company or companies connecting with the line of road of this company upon such terms and conditions as may be mutually agreed upon between the parties thereto.

Art. 20. This corporation may exercise all its powers and hold meetings of its board of directors and of its executive committee in either of the cities of New York, Boston, or Philadelphia,

Art. 21. Each of said railway companies shall convey to this consolidated company all property, donations, and all rights of way, franchises, subscriptions, and rights and interests in anything of value which either of said companies may have or acquire, and both of said companies shall continue to exist and keep up their organizations until all rights are acquired and all contracts are adjusted and the agreements of covenants herein by the respective companies are fully performed and carried out.

58 Art. 22. All contracts made by either of said railroad companies are to be assumed, approved, and performed by the consolidated company except so far as these articles apply to them and they may be affected thereby. Certificates of stock are to be issued by this company to such persons as may be entitled to the same upon subscriptions to the capital stock of either company in lieu of the certificates of stock they are now or may hereafter be entitled to from said companies.

Art. 24. The memorandum of contract of date July 1st, 1869, between Chicago, Burlington and Quincy Railroad Company and the Burlington and Southwestern Railway Company to use the tract of the road of the former company between Burlington and the point on said railroad southwest of Fort Madison known as the junction or Painter creek are hereby recognized and approved by this consolidated company.

The line of road to be located and constructed by this company shall commence at or near the junction or Painter creek aforesaid and extend to Farmington and southwesterly, as provided in section one herein, and the section of the first or Iowa division, between the junction and the point of connection with the North Missouri railroad, shall be constructed and made ready for the rolling-
59 stock before commencing work on the balance of said first or Iowa division.

Art. 25. The two companies shall each furnish to this consolidated company before this consolidation can take effect sixty-five thousand dollars of good cash collectable subscriptions, to be used in the construction of the road between the junction and the North Missouri railroad, and each company, by its board of directors, agrees to use their best endeavors to secure subscriptions to the capital stock of this consolidated company on the line of the road between Burlington and the North Missouri railroad in the aggregate amount of seventy thousand dollars in addition to the one hundred & thirty thousand dollars of subscription hereby provided for.

Art. 26. All the subscriptions to the capital stock of the Fort Madison, Farmington and Western Railway Company, and all other subscriptions that may be secured to this company in Lee county, shall be paid, according to the terms and conditions of said subscriptions, to C. R. Weaver, treasurer of that company, at Fort Madison, and the money thus collected or paid upon the Lee county subscriptions with such an amount to be paid by the subscribers to the stock of the Burlington and Southwestern Railway Company as shall be sufficient to build the road from the junction to
60 Farmington (which shall be paid in like instalments and at the same time as the Lee county subscription), shall be appropriated and used as the work progresses by this company in constructing the road between the junction and Farmington, including the engine-ring and incidental expenses of the company incurred in building that part of the road. All other subscriptions shall be used in building the road from Farmington west to a point of connection with the North Missouri railroad. The whole amount of money raised as contemplated in these articles shall only be paid directly to the parties doing the work upon the road, whether contractors or sub-contractors.

Art. 27. All subscriptions hereafter to be raised in Lee county shall be upon the subscription books of the Fort Madison, Farmington and Western Railway Company.

Art. 28. The stock already subscribed or hereafter to be subscribed to the Fort Madison, Farmington and Western Railway Company, and the equal amount of the stock subscribed or to be subscribed to this consolidated company or to the Burlington and Southwestern Railway Company, under article 26, shall not be liable for any debts of the Burlington and Southwestern Railway Company
61 or of this consolidated company, except for the building of the road from the junction or Painter creek to the North Missouri railroad.

Art. 29. The work upon the road from the junction to the North Missouri railroad shall be prosecuted as fast as the stock subscribed can be collected or is paid up.

Art. 30. In case this consolidated company shall fail or be unable to iron the road from the junction to the Des Moines river and equip the same or cause it to be equipped with a sufficient amount of rolling-stock within twelve months after the road-bed is prepared ready for the iron the road to Farmington shall be forfeited and revert to the Fort Madison, Farmington and Western Railway Company free from all liens, who shall have full power to take possession of and iron, stock, and operate the road as though this consolidation had not been made.

Art. 31. The articles and stipulations herein, so far as the same are in the nature of covenants between the two companies consolidated hereby, and those relating to the points named in the line of the road are and shall be unalterable and absolute.

Art. 32. Vacancies in the board of directors occurring prior
62 to the 1st day of January, 1872, shall be filled by the election of the stockholders residing in the town, city, or locality of

the director or directors whose place becomes vacant, and a removal from his present place of residence shall work a vacation of his place in the board of directors.

Art. 33. The engineers are to be employed by the board of directors of the consolidated company, and are to be under their control and directions. Either company while it exists shall have the right at its own expense to employ engineers to inspect the work, but not to direct it, and shall have the power and right to inspect records, accounts, papers, and all other writings of the consolidated company, as well as all plans, specifications, surveys, and papers of every character used by the engineers as found in their office.

Art. 34. The board of directors shall have power to appoint an executive committee for Iowa and also for Missouri and to define their powers; but until the completion of the road to St. Joseph the members of the board of directors residing in Missouri, as provided in these articles, shall constitute a local executive committee for Missouri, to whom shall be entrusted, under and subject to
63 the directions and control of the board of directors, the management of the affairs of the company in the State of Missouri; the right to solicit and procure subscriptions to stock and to employ proper agents to attend to all matters of business of the company; to make contracts, subject to the ratification of the board of directors; to open an office at St. Joseph for said company, and keep the same in pursuance of law, and in a general way to look after the management and interests of the affairs of the company in the State of Missouri.

Art. 35. The president or vice-president may, at any time when they or either of them shall believe the interest of the company require it, call a special meeting of the stockholders, to be held at the city of Burlington, Iowa, upon giving fifteen days' notice of such meeting by a notice in writing sent by mail to the stockholders, or by publication in some daily newspaper in the city of Burlington, and stating the time and place of such meeting.

We hereby certify that the foregoing is a true copy of articles of incorporations as amended by the stockholders at a meeting held at Burlington, Iowa, on the 12th day of July, 1871.

[SEAL.] JAMES PUTNAM, *President.*
N. P. SUNDERLAND, *Secretary.*

64 Endorsed upon the foregoing articles of incorporation of the Burlington and Southwestern R. R. Company is the following:

"No. 12. Articles of incorporation of B. & O. R. R. Co., Iowa. State of Iowa. Filed for record in the office of secretary of state April 10th, 1872. Recorded in Book "E" of Incorporation, page 289 to 298."

Fee, $5—paid. ED. WRIGHT,
Sec'y of State.

HOUSTON: We would like to see the the original articles.

MULLINS: We offer this simply to show a conformation with this deed.

Objected to by plaintiff because there is no proof as to what it is. It does not come here authenticated in any way by which we can take any notice of it. It is not authenticated by any secretary of state's office. It is of no validity in this State.

COURT: Who certifies to it?

HOUSTON: The president of the company. We have no law that makes papers of a foreign corporation evidence in this State.

COURT: It seems to me that this is filed with the secretary of state.

HOUSTON: And the further objection that we cannot recognize papers from a private party. We can only recognize it where it is authenticated by the secretary of state. This signature of the secretary of state is not attested by any seal.

65 COURT: I will admit the paper for the present, subject to the objection, but I have serious doubts about whether it is authenticated according to the laws of this State.

Def't offers in evidence mortgage dated April 1st, 1872, *mortgage* executed by the Burlington & Southwestern Railroad Company to the Farmers' Loan and Trust Company. The record of said mortgage is in words and figures following, to wit:

This indenture, made on the first day of April, one thousand eight hundred and seventy-two, between the Burlington and Southwestern Railway Company, a corporation organized, formed, and existing under and by virtue of the laws of the States of Iowa and Missouri, and successors of *of* the St. Joseph and Iowa Railroad Company, a corporation duly organized and existing under the laws of the State of Missouri, party of the first part, and the Farmers' Loan and Trust Company, of the City of New York, party of the second part, witnesseth: That whereas the branch railroad hereinafter mentioned was duly projected and established on the 25th day of March, eighteen hundred and seventy-one, by the St. Joseph and Iowa Railroad Company as the Central North Missouri Branch of the St. Joseph and Iowa railroad, and thereafter said St. Joseph and Iowa Railroad

66 Company sold and conveyed all the property, rights, privileges, and franchises to the Burlington and Southwestern Railway Company, a corporation existing under the laws of Iowa; and whereas said Burlington and Southwestern Railway Company, by virtue of the said purchase and the laws of said State of Missouri, is duly authorized to construct said branch railroad; and whereas the name of said branch road has been duly and legally changed and it is now known as the Linneus branch of the Burlington and Southwestern Railway Company; and whereas the said first party has leased for the term of one thousand years the railroad and the property and franchises of the Lexington, Lake and Gulf railroad, extending from Lexington, Missouri, southwardly, for the use and in behalf of said branch line and as a part of the same, with the right to mort-

gage the same, as herein set forth; and whereas the said first party is authorized by the laws aforesaid to borrow any sums of money which may be necessary to construct, equip, and maintain its said branch railroad and to secure the payment thereof by mortgage or deed of trust of its corporated property and franchises which it now has or may hereafter acquire in and connected with the said branch line of road and the leases—premises, herein referred to; and whereas the said party of the first part, by a resolution of its board of directors, and in pursuance of the instructions
67 and request of the stockholders of the said branch, at a meeting duly called for that purpose, and the consent of the stockholders of the said Lexington, Lake and Gulf railroad leased as aforesaid and set forth in the deed of lease of said first party, has duly authorized its president and secretary to execute in the name and under the corporate seal of said company to issue bonds, to be designated as the first-mortgage bonds, upon the said Linneus branch, and number in a regular series from one (1) to the highest number issued, and to be secured by such deed of trust or mortgage on the whole line of said branch railroad extending from Unionville, in Putnam county, Missouri, to Kansas City, by the way of Lexington and such other point in Southwest Missouri as may hereafter be determined upon, and from Lexington, Missouri, over said leased premises to Butler, in Bates county, Missouri, and to such other points at or near the Arkansas line as may be hereinafter determined upon by the board of directors, in such form and upon such conditions as the said president may deem most advantageous to and in procuring the necessary means to build and equip the said branch railroad, including said leased premises, to any amount not exceeding twenty thousand dollars per mile of the whole
68 line of said branch, it being understood that for the purpose of these presents, and as set forth in the deed of lease, that said Lexington, Lake and Gulf railroad is a part and parcel of said branch line; and whereas by said resolution and the consent and authority aforesaid the said president is authorized to incorporate in said deed of trust or mortgage such terms, conditions, and rate of interest, not exceeding eight per cent. per annum, payable semi-annually, as he might determine; and whereas said president has determined to make said bonds payable at the agency of said company in the city of New York or in the city of London, England, twenty-five years from the first day of April, in the year 1872, bearing interest at the rate of seven per cent. per annum, payable semi-annually, in gold coin, at the agency of said company in New York or London, England, as aforesaid, free of United States Government tax, and bonds to be convertible into the capital stock of the said branch road, at the option of the holder thereof, on any first day of April or October for twenty years from this date, the holders receiving therefor at the rate of ten shares of said capital stock for each one-thousand-dollar bond, and to have said bonds duly prepared and deposited with said parties of the second part, to be delivered over to the treasurer of said railway company upon
69 the order of said president, to be used exclusively in the

construction and equipment of said Linneus branch, as hereinbefore stated, with the necessary sidings, stations, and other appurtenances, said bonds to be of the denomination of one thousand dollars, or £200 sterling. Each are in the form following, to wit:

UNITED STATES OF AMERICA, *States of Iowa and Missouri.*

£200 sterling. No. —. $1,000.

Burlington and Southwestern Railway Company, Linneus branch, Lexington and Kansas City division. First-mortgage sinking-fund convertible bond on the Linneus Branch of said road, seven per cent. gold, free of United States Government tax.

Know all men by these presents that the Burlington and Southwestern Railway Company, for and in the name of the Linneus branch of said railway, which said branch was duly projected and established by the St. Joseph and Iowa Railroad Company under and by virtue of the laws of the State of Missouri as the central branch of the said Saint Joseph and Iowa Railroad Company, which said Saint Joseph and Iowa Railroad Company sold its property and franchises to the said Burlington and Southwestern Railroad Company, a corporation organized and existing under the laws of the State of Iowa, is indebted unto the Farmers' Loan and
70 Trust Company of the city of New York, or bearer, in the sum of one thousand dollars in United States gold coin *or* par, to be paid at the agency of said railway company in the city of New York, or the sum of two hundred pounds sterling, to [be] paid at the agency of said railroad company in the city of London, England, at the option of the holder thereof, on the first day of April, A. D. 1897, with interest on the said principal from and after the date hereof at the rate of seven per cent. per annum in gold coin, as aforesaid, free of all United States Government tax or duty, at such agency in the city of New York or in the city of London on the first day of April and October of each year on the presentation and surrender of the annexed coupons as they severally become due, in accordance with their provisions. This bond shall pass by delivery or by transfer on the books of the company kept for that purpose at its agency in New York and such other places as the board of directors may hereafter legally appoint. After a registration of ownership certified hereon by the transfer agent of the said company no transfer except on the books of the company shall be valid unless the last transfer shall have been to bearer, the bond to be subject to successive registration and transfer *on* bearer at [the] option of any lawful holder. This bond is one of a series
71 issued by the Burlington and Southwestern Railway Company by virtue of the provisions of a lease of the Lexington, Lake and Gulf railroad to said first party, in the name and for the use of said Linneus branch, and by virtue of the authority of an act of the General Assembly of the State of Missouri entitled "An act [to] aid in the building of branch railroads in the State of Missouri," approved March 21st, 1868, and in pursuance of the authority of the stockholders in said branch, and to aid in the construc-

tion and equipment of the said Linneus branch of the Burlington and Southwestern railway, and said leased premises extending from Unionville, in Putnam county, in the State of Missouri, in a southwesterly direction, by the way of Linneus, in Linn county, and Lexington, in Lafayette county, to Kansas City and such other points as may hereafter be legally determined upon, and also upon the line of road leased from the Lexington, Lake and Gulf railroad, of Missouri for the use of said branch, extending from Lexington aforesaid to Butler, in Bates county, and such other points as may hereafter be legally determined upon, limited to twenty thousand dollars of bonds to a mile of railroad, secured by a first mortgage and trust deed to the said Farmers' Loan and Trust Company of the road, rolling-stock, and franchises of the said Linneus
72 branch and pertaining thereto, including the said leased premises, entitled to the benefit of a sinking fund provided for in the mortgage, and convertable into the capital stock of the said branch line on any first day of April and October during a period of twenty years from date. This bond is to be valid only when authenticated by a certificate endorsed thereon signed by the trustee named in the mortgage bond.

In witness whereof the said company has caused its corporate seal to be hereto affixed, and the same to be subscribed by its president and countersigned by its secretary in conformity to said mortgage, under date of April 1st, A. D. 1872.

——— ———, *President.*
——— ———, *Secretary.*

To each of which said bonds there are attached fifty interest coupons, numbered, respectively, from one to fifty, both inclusive, in the following form:

$35.00, £7. On the first day of October, 1872, Burlington and Southwestern Railway Company, for and in behalf of the Linneus branch thereof, will pay $35.00, thirty-five dollars, in U. S. gold coin at its agency in New York, or seven pounds sterling at its agency in London, on the surrender of this coupon, to bearer or, if registered, to the registered holder thereof, or order, for six months' interest due that day on bond No. —, issued for and secured by and upon said Linneus branch of said road.

N. P. SUNDERLAND, *Secretary.*

73 Now, therefore, this indenture witnesseth: That the Burlington and Southwestern Railway Company, in order to secure the payment of the said bonds and the interest thereon, and in consideration of five dollars to it in hand paid by said party of the second part at the execution and delivery of these presents, the receipt whereof is hereby acknowledged, and by virtue of the power and authority in it vested, as herein before stated, to issue said bonds and make this conveyance upon the said branch line of roads, has granted, bargained, sold, transferred, and conveyed, and by these presents doth grant, bargain, sell, transfer, and convey, unto the said party of the

second part, their successors in said trust and assigns, all the following and all the above-described property, to wit:

"All the present and in-future-to-be-acquired property of, or in any manner pertaining to, the said Linneus Branch of the Burlington and Southwestern Railway Company, and all the right, title, and interest and equity of redemption therein, whether of said company or the stockholders in said branch or leased premises—that is to say, all the branch railroad, including the premises leased as aforesaid, of the Lexington, Lake and Gulf Railroad Company now made and to be constructed, extending from the main line of said Burlington and Southwestern railway, at or near Unionville, in the county of Putnam, in the State of Missouri, by the way of Linneus and Lexington to Kansas City, and by the line of said leased premises from Lexington to Butler, in Bates county, Missouri, and to such other points in southwestern Missouri as may be determined upon by the board of directors, or however said branch line of road, including said leased premises, may be described or built, including the right of way therefor, road-bed, superstructure, iron, ties, chains, splices, bolts, nuts, spikes, and all the lands and depot grounds, station-houses, depots, viaducts, bridges, timber, and materials and property purchased and to be purchased or otherwise acquired for the construction and maintenance of said branch railroad, all the revenue and income of said Linneus branch, and all the rights, privileges, and franchises relating thereto, and property acquired by virtue thereof, now in possession or hereafter to be acquired, including machine shops, tools, implements, and personal property used therein or along the line of said branch railroad, together with all the property of every kind acquired by said first party by virtue of said lease of said Lexington, Lake and Gulf railroad, and which branch line of road and leased premises extending from said town of Unionville by the way of Linneus and Lexington to Kansas City and southwestern Missouri, as hereinbefore set forth, is known and designated as the Linneus branch of the Burlington and Southwestern
74 railway: To have and to hold the said branch line of railway, including said leased property and premises and all and singular the said premises and every part thereof, with the appurtenances, unto the said party of the second part, its successors in said trust or assigns, but for the following purpose and upon the following expressed trust—that is to say: In case the said party of the first part, for its said branch line, shall fail to pay, or cause to be paid, the principal, or any part thereof, or any of the interest on any of the bonds secured or intended to be secured hereby, at any time when and where the same may become due and payable according to the terms thereof, and for sixty days thereafter, or if default shall be made in payment of money required to be paid into the sinking fund as herein provided, and such default shall continue six months, then and in either case all of said bonds, both principal and interest, shall thereupon at the option of the holder become due and payable, at the request of the holders of one-tenth ($\frac{1}{10}$) of said bonds then unpaid and outstanding; the said parties of the second part, their successors in said trust or assigns, may enter into and take

possession of all and singular the railroad premises and property hereby conveyed, or intended to be conveyed, and, as the attorneys-in-fact or agents of said first party by themselves or their agents duly constituted, have, use, and employ
75 the same, making from time to time all needful repairs, alterations, and additions thereto, and after deducting the expenses of such use, repairs, alterations, and additions apply the proceeds of said premises to the payment *pro rata* of the principal and interest of all such bonds remaining unpaid; or said parties of the second part, their successors in this trust or assigns, at their discretion, may, [and] on the written request of the holders of one-tenth ($\frac{1}{10}$) of said bonds then unpaid, shall, cause said premises, or so much thereof as shall be necessary to discharge the principal and interest of all such bonds as may be unpaid, together with the expenses of sale, to be sold at public auction at the city of St. Louis, in the State of Missouri, after giving sixty days' notice of the time and place of sale and terms of such sale, by publishing the same at least once in each week for eight successive weeks next previous to the sale in two of the principal newspapers for the time being published in each of the cities of New York and Boston, and in one of the *the* principal newspapers for the time being — in the city of St. Louis, in the State of Missouri, and Burlington, in the State of Iowa; and upon such sale to execute to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance in fee-simple for the same, which shall be a bar against the said Burlington
76 and Southwestern Railway Company and the said Lake and Gulf Railway Company, and the stockholders of the said Branch railway, each and all their successors and assigns, and all persons claiming under them, of all right, interest, or claim in or to said premises, or any part thereof; and the said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof and of managing the said property, including their own reasonable compensation and enough to indemnify and save themselves harmless from and against all liabilities arising from this trust, apply so much of the proceeds of said property as may be necessary to the payment *pro rata*, first, of the interest and then of the principal of said bonds remaining unpaid, whether the same may be then due and payable or otherwise, and shall restore the residue thereof, if there be any, to the said party of the first part, its successor- or assigns, for its said branch, it being expressly understood and agreed that in no case shall any claim be made or advantage take- of valuation, appraisement, redemption, or extension laws by said party of the first part, its successors or assigns, nor any injunction or stay of proceedings he had, or any process be obtained or applied for by it or them to prevent such entry, sale, and conveyance as aforesaid; and at any sale of the afore-
77 said property, or any part thereof, whether made under the power herein granted or any judicial authority, the parties of the second part, their successors or assigns, may, by the written request of a majority in interest of the holder- of said bonds, bid for and purchase the property so sold or any part thereof

in behalf of the holders of the bonds secured by this instrument and then outstanding in proportion to the respective interests of such holders. It is also hereby agreed and understood that it shall be lawful for the said railway company, party of the first part, in the name of its said branch as aforesaid, or its assigns, to dispose of the current net revenues of said railroad premises hereby conveyed as it or they shall elect until default shall be made in the payment of the principal or interest of said bonds or some of them, or until default shall be made by said first party, its successors or assigns, in the payments of the moneys required to be paid into the sinking fund, or in the performance or fulfillments of its covenants, or some of them, herein created to be kept and performed by said branch line of road as herein set forth; and the said party of the first part, for itself and its successors, and for said branch line and said leased premises, hereby covenants and agrees to execute and deliver any further reasonable and necessary conveyance of said premises or any part thereof to said party of the second part, its succes-
78 sors in said trust and assigns, which counsel may advise for the more fully conveying said premises and carrying into effect the object and purposes of these presents, and of making them embrace the property and effects conveyed or intended to be conveyed; at the end of every six months, commencing on the first day of January, in the year 1883, the sum of twenty thousand dollars shall be reserved out of the net earnings of the said branch railroad by the said party of the first part, and within sixty days thereafter be paid over to said trustees, their successors in said trust and assigns, for a sinking fund for the redemption of the bonds secured by these presents; said trustees shall [at] once deposit said sum so paid over in some safe and responsible depository in the city of New York, and said money, with all accumulations of interest thereon, shall be invested by said trustee in the purchase of bonds secured by these presents, provided the same can be obtained at not above par and accrued interest, and the bonds so purchased shall be deposited with a responsible depository, as said trustee may from time to time decide upon, and be immediately registered, stamped, or indorsed as belonging to said sinking fund, but shall remain in force, and the interest thereon shall continue to be paid by said party of the first part, acting for and in the
79 name of said branch, its successors or assigns, and the amount of such interest shall be added and be applied as a part of the capital of the sinking fund hereby established and invested in the purchase of other bonds in the same manner as the semi-annually payments of twenty thousand dollars hereinbefore provided for, and preparatory to such purchase of bonds the said trustees shall give twenty days' notice thereof in one or more of the daily newspapers published in the cities of New York and Boston at least once a week, and shall make said purchases at the lowest price or prices at which bonds may be offered pursuant to such notice, but not exceeding ten per cent. premium and accrued interest, and in case the bonds cannot be purchased at such rate,

within three months after the expiration of the notice aforesaid, then the said money shall be invested in these bonds at a higher rate, or in State or in United States securities at the discretion of the said trustees. It is hereby mutually agreed that upon payment of the principal and interest of said bonds the estate hereby granted to the said party of the second part shall be void, and the right to the premises and property hereby conveyed shall revert to and reinvest in the said party of the first part, its successors and assigns, for its branch line aforesaid, without any acknowledgment of satisfaction, reconveyance, re-entry, or other act. The party of the first
80 part further agrees at all times to keep an office in the city of New York, where the principal and interest of the bonds hereby secured shall be payable as the same shall become due, and will provide for the transfer and registration of said bonds at the said agency, and also for the transfer of the stock of the said Linneus branch at such agency. It is also hereby mutually agreed that the said parties of the second part, its successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent appointed by them when such agent shall have been appointed with reasonable discretion; and the said party of the second part and their successors in said trust and assigns shall be entitled to reasonable compensation for their labor and management of said trust. It is further agreed and understood that in case of incapacity, resignation, neglect, or refusal to act on the part of said trustees, which incapacity, neglect, or refusal — conclusively determined by unanimous vote of the board of directors of said first party, all its right, estate, interest, power, and control in the premises shall be divested, cease, and determine, and the said board of directors may by like vote supply such vacancy, or failing to take proceedings therefor within thirty days, the holders of one-tenth of said
81 bonds may apply to any court in the State of Missouri having jurisdiction of the premises to appoint a new trustee or trustees to supply the said vacancy, and such new trustees appointed in the manner aforesaid shall become invested, for the purpose aforesaid, with all the rights and interest requisite to enable him or them to execute the purpose of this trust without any further assurance or conveyance of the same; but should it be desirable or necessary the said parties hereto shall deliver such releases and conveyances as *shall* counsel shall advise.

It is also expressly understood and agreed that the said bonds shall have each attached thereto the proper stamp required by the laws of the United States, and that they shall stand equally secured by this mortgage, though made, issued, and sold at different times, and that no bonds shall be deemed secured by or issued under this mortgage unless the same is certified by the trustees herein named, or their successors in said trust, and that the proceeds of the abovementioned bonds of said first party shall be applied to the construction, completion, and equipment of the aforesaid Linneus branch of the Burlington and Southwestern railway, including the leased premises, in the manner herein provided, and for no other purpose

whatsoever, and the said parties of the second part accept the
82 trust created by these presents. This mortgage and trust-deed is made and entered into on the part of the said first party under and pursuant to the laws of the State- of Iowa and Missouri, and by virtue of an act of the General Assembly of the State of Missouri, approved March 21st, 1868, as well as under and pursuant to [a] resolution of the board of directors of said party of the first part, and also of the stockholders of the said Linneus branch of the Burlington and Southwestern railway, and the authority contained in said lease made by said Lexington Lake and Gulf Railroad Company, and duly made and entered on the minutes of said parties in interest for the purpose and with the intent to secure the payment of said bonds as aforesaid.

In witness whereof the said Burlington and Southwestern Railway Company has caused its corporate seal to be hereto affixed and these presents to be attested by the signatures of its president and secretary, and the parties of the second part have hereto subscribed their names to testify their acceptance of the said trust, the day and year first above written.

[SEAL.] BURLINGTON AND SOUTHWESTERN RAILWAY COMPANY,
By JAMES PUTNAM, *President.*

Attest: N. P. SANDERS, *Secretary.*

[SEAL.] THE FARMERS' LOAN AND TRUST COMPANY,
B[y] R. G. RALSTON, *Pr't.*

Attest: G'R BLITIKE.

83 *Acknowle-gm't [of] Pres't of B. & S. W. R. R. Co.*

STATE OF NEW YORK, *County of New York:*

Be it remembered that on the 6th day of ——, 1872, before me, a commissioner residing in the city [and] county of New York and State of New York, duly commission[ed] by the Governor of the State of [Missouri] to take acknowledgements and proofs of deeds and other instrument- in writing under seal to be used and recorded in said State of [Missouri], personally came James Putnam, president of the Burlington and Southwestern Railway Company, who is personally known to me to be the identical person whose name is signed to the foregoing deed of conveyance, who, by me being duly sworn, deposes and says he resides in the city of Burlington, in the county of Des Moines and State of Iowa; that he is the president of the Burlington and Southwestern Railway Company, and he knows the corporate seal of said company; that the seal affixed to the foregoing conveyance is the corporate seal of said company; that it was affixed by order of said company, and that he signed his name to said conveyance by like order as president of said company and acknowledged that he executed and delivered the said deed as his free and voluntary — for the uses and purposes therein

set forth, and that the said company also executed, *and that said company also executed* said conveyance as its free and voluntary act for the uses and purposes therein set forth.

84 In witness whereof I have hereunto set my hand aud official seal this 6th day of May, 1872.

[SEAL.] EDWIN F. COREY, JR.,
Commissioner for Missouri in New York.

Acknowledg't [of] Pres't of Farmers' L. & T. Co.

UNITED STATES OF AMERICA, }
State of New York, City and County of New York, } *ss:*

Be it remembered that on the 6th day of May, in the year 1872, before me, the undersigned, Edwin F. Corey, J-., a commissioner, residing in the city of New York, duly commissioned and authorized by the executive authority and under the laws of the State of Missouri to take the acknowledgement of deeds, &c., to be used or recorded therein, personally appeared Roswell G. Rolston, to me personally known to be the president of the Farmers' Loan and Trust Company, who, being by me duly sworn, did depose and say that he resides in the city of New York; that the seal which is affixed to the within instrument is the corporate seal of said company, and that the seal was thereto affixed by authority of the board of directors of said company; that he thereupon subscribed the name as [president] thereto by like authority, and that the said Roswell G. Rolston further acknowledged to me that he executed the said instrument as the free — voluntary act and deed of said com-

85 pany for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day & year aforesaid.

[SEAL] EDWIN F. COREY, J-.,
Commissioner for Missouri in New York.

Filed for record May 18th, 1872, 8 o'clock, a. m. Words included in [ ] in the above are interlined in the original. [is placed in the above where erasures appear in the original.

MILTON CANBY, *Recorder.*

Pl'ff Objects.

Objected to as not showing authority. It recites authority, but it is not evidence to anybody else.

COURT: They may yet, before completing their record title, show, I admit, the paper subject to your objections, and if they fail to make the connection that settles the question.

Def't reads part of the mortgage.

HOUSTON: You will see, your honor, that they are mortgaging the branch by another name. They can do that, but there ought to be a record of the change. Defendant shows here a branch established by some name, and now it mortgages another branch—that is, they

mortgage it by another name. A corporation receives its authority from the law, and its name is a part of it. It cannot act any other way.

Defendant offers in evidence the mortgage on the main line made the first day of November, 1870, by the Burlington & Southwestern Railway Company to John W. Brooks and Hardy, which is in words and figures following, to wit:

86 *Mortgage B. & S. W. R. R. Co. to Brooks & Hardy on Main Line.*

This indenture, made on the first day of November, in the year of our Lord one thousand eight hundred & seventy, by and between the Burlington and Southwestern Railway Company, a corporation organized, formed, and existing under and by virtue of the laws of the States of Iowa and Missouri, and authorized to construct the said road hereinafter described, of the first part, and John W. Brooks and Alphias Harty, of the city of Boston, and James F. Joy, of the city of Detroit, mortgagees and trustees, parties of the second part, —: That whereas the party of the first part is authorized by the laws aforesaid to borrow any sum or sums of money which may be necessary to construct, equip, and maintain its railroad, and to secure the payment thereof by mortgage or deed of trust of its corporate property and franchises which it now has or may hereafter acquire; and whereas the said party of the first part has by resolution of its board of directors duly authorized its president, treasurer, and secretary to execute in its corporate name and under its corporate seal and to issue bonds, to be designated as first-mortgage bonds, and numbered in a regular series from one, 1, to the highest number issued, and to be secured by such deed of trust or mortgage on the whole line of its railroad, in such form and upon such condition as

87 the said president may deem most advantageous, to aid in securing the necessary means to build and equip the said railroad, to any amount not exceeding twenty thousand dollars per mile of the main line of said company's railroad; and whereas by the said resolution the said president is authorized to incorporate in such deed of trust such terms, conditions, and rate of interest, not exceeding eight (8) per cent. per annum, payable semi-annually as he might determine; and whereas the said president has determined to make said bonds payable at the agency of said railway company in the city of Boston twenty-five years from the first day of November, in the year one thousand eight hundred and seventy (1870), bearing interest at the rate of eight per cent. per annum, payable semi-annually at the agency of said company in Boston as aforesaid, free of Government tax, said bonds to be convertable into the capital stock of the company, at the office of the holder thereof, on any first day of May or November for twenty years from this date, the holder thereof receiving at [the] rate of ten shares of the said capital stock for each one-thousand-dollar bond, and to have said bonds duly prepared and deposited with the said party of the second part, to be delivered over to the treasurer of the said

railway company on the order of its president upon the conditions hereinafter set forth, to be used exclusively in the construc-
88 tion and equipment of said railway, with the necessary sidings, stations, and other appurtenances, said bonds to — of the denomination of one thousand dollars each, and are in the form following, to wit:

UNITED STATES OF AMERICA, *States of Iowa and Missouri.*

No. —. $1,000.

Burlington and Southwestern Railway Company mortgage convertable bond, eight per cent, free of Government tax.

Know all men by these presents that the Burlington and Southwestern Railway Company, a corporation duly created and authorized under the laws of the States of Iowa and Missouri, is indebted to John W. Brooks, James F. Joy, and Alpheas Hardy in the sum of one thousand dollars of the lawful money of the United States of America, which the said company promises to pay to the bearer hereof or, in case of registration, to the registered holder on the first day of November, A. D. one thousand eight hundred and ninety-five, together with the interest thereon from and after the date hereof, at the rate of eight per cent. per annum, free of all Government tax or duty (which if levied is to be paid by said company), payable semi-annually in the city of Boston, State of Massachusetts, at the agency of the company on the first day of May and November of each year on the presentation and surrender of the annexed coupons as they severally come due in
89 accordance with their provisions, the principal to be paid at the same place as the interest. This bond shall pass by delivery or by transfer on the books of the company at its agency in the city of Boston, Massachusetts, and at such other places as the company shall hereafter appoint after registration of ownership certified hereon by the transfer agent of said company. No transfer except on the books of the company shall be valid, unless the last transfer shall have been to bearer, the bond to be subject to successive registrations and transfer to bearer at the option of any lawful holder. This bond is one of a series issued by the said Burlington and Southwestern Railway Company for the construction of their railway in a southwesterly direction from Burlington, Iowa, to some point on the Missouri river, a distance of about three hundred miles, limited to twenty thousand dollars of bonds to a mile of road, with a provision restricting their certification by the trustees till they shall have evidence that the previous expenditures have put the section of road on which the bonds called for in a condition to be completed by the issue of the bond, secured by a first mortgage and trust deed to said Brooks, Joy, and Hardy of the road, rolling-stock, and franchises, entitled to the benefit of sinking fund pro-
90 vided for in the mortgage, and convertable into the capital stock of the company on any first day of May and November during a period of twenty years from date. This bond is to be

valid when authenticated by a certificate endorsed hereon signed by the trustees named in the mortgage and bonds, or a majority of them. In witness whereof the said corporation has caused its corporate seal to be hereto affixed and the same to be subscribed by its president and countersigned by its treasurer under date in conformity to said mortgage of November 1st, A. D. 1870.

To each of which bonds there are attached fifty interest coupons, numbered respectively from one to fifty, both inclusive, in the following form:

$40. On the first day of May, 1871, the Burlington and Southwestern Railway Company will pay at its agency in Boston, Mass., on surrender of this coupon to bearer or, if registered, to the registered holder hereof, or order, forty dollars, being six months' interest due on that day on bond No. —.

JOHN H. DAVEY, *Treasurer.*

Now, therefore, this indenture witnesseth: That the said Burlington and Southwestern Railway Company, in order to secure the payment of its said bonds and the interest thereon, and in consideration of the sum of five dollars to it in hand paid by the said party
91 of the second part at the execution and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained and sold, transferred and conveyed, and by these presents doth grant, bargain and sell, transfer and convey, to the said parties of the second part, their successors in said trust, and assigns, all the following and all the above described property, to wit: All the present and in-future-to-be-acquired property of the said railway company, and all the right, title, interest, and equity of redemption therein—that is to say, all the railroad of the said party of the first part, now made and to be constructed, extending from Burlington, in the State of Iowa, to the west line of the State of Missouri, at or north of St. Joseph, or howeverwise described or built, including the right of way therefor, road-bed, superstructure, iron, ties, chains, splices, bolts, nuts, spikes, and all the lands and depot grounds, station-houses, depots, viaducts, bridges, timber, and materials, and property purchased or to be purchased or otherwise acquired for the construction and maintenance of said railroad, and all the engines, tenders, cars, and machinery, and all kinds of rolling-stock now owned or to be hereafter purchased by said party of the first part to be used upon said railroad, all the revenue and income of said railroad, and all the rights, privileges, and franchises of the said party of the 1st part relating thereto, and property acquired by virtue thereof, now in possession or hereafter to be acquired, including machine shops, tools, implements, and personal property used therein or along the line of said railroad: To have and to hold the said railroad and property and all and singular said premises and every part thereof, with the appurtenances, unto the said parties of the second part, their successors in said trust and assigns, but for the following purposes, and upon the following express trust—that is to say: That in case the said Burlington and

Southwestern Railway Company fail to pay the principal
92 or any part thereof, or any of the interest or any of the bonds secured or intended to be secured hereby, at any time when and where the same may become due and payable, according to the terms thereof, and for thirty days thereafter, or if default shall be made in payment of the moneys required to be paid in the sinking fund, as herein provided, and such default shall continue for six months, then and in either case all of said bonds, both principal and interest, shall thereupon become due and payable at the request of the holders of one-tenth ($\frac{1}{10}$) of said bonds then unpaid and outstanding. The said parties of the second part, their successors in said trust or assigns, may enter into and take possession of all and singular the railroads, franchises, and property hereby conveyed or intended to be conveyed, and, as the attorneys-in-fact or agents of said first party, by themselves or their agents duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and after deducting the expenses of said use, repairs, alterations, and additions apply the proceeds of said premises to the payment *pro rata* of the principal and interest of all such bonds remaining unpaid; or said party of the second part, their successors in said trust or assigns, at their discretion, may, and on the written
93 request of the holders of one-tenth ($\frac{1}{10}$) of said bonds then unpaid, shall, cause said premises, or so much thereof as may be necessary to discharge the principal and *and* interest of all such bonds as may be unpaid, together with the expenses of said sale, to be sold at public auction at Des Moines, in the said State of Iowa, after giving sixty days' notice of the time and place and terms of said sale, by publishing the same at least once in each week for eight successive weeks next previous to the sale in two of the principal newspapers for the time being published in each of the cities of New York and Boston, and in one of the principal newspapers for the time being published in said Des Moines, and upon such sale to execute to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance in fee-simple for the same, which shall be a bar against the said Burlington and Southwestern Railway Company, party of the first part, its successors and assigns, and all persons claiming under it or them, of all right, interest, or claim in or to said premises or any part thereof; and the said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof and of managing the said property, including their own reasonable compensation and enough to indemnify and save
94 themselves harmless from and against all liabilities arising from this trust, apply so much of the proceeds of said property as may be necessary to the payment *pro rata*, first, of the interest and then of the principal of said bonds remaing unpaid, whether the same may be then due and payable or otherwise, and shall restore the residue thereof (if there be any) to the said party of the first part, its successors and assigns, it being expressly understood and agreed that in no case shall any claim be made or advantage taken of valuation, appraisement, redemption, or extension laws by the

said party of the first part, its successors or assigns, nor any injunction or stay of proceedings he had or any process be obtained or applied for by it or them to prevent such entry, sale, and conveyance as aforesaid; and at any sale of the aforesaid property or any part thereof, whether made under the power herein granted or any judicial authority, the parties of the second part, their successors and assigns, may by the written request of a majority in interest of the holders of said bonds, bid for and purchase the property so sold, or any part thereof, in behalf of the holders of the bonds secured by this instrument and then outstanding, in proportion to the respective interests of such bondholders.

It is hereby agreed and understood that it shall be lawful
95 for the said railway company, party of the first part, or its assigns, to dispose of the current net revenues of said road hereby contained as it or they shall elect, until default shall be made in the payment of the principal or interest of said bonds, or of some of them, or until default shall be made by said first party, its successors or assigns, in the payment of moneys required to be paid into the sinking fund, or in the performance or fulfillment of the covenants, or some of them, herein created to be kept and performed by said party, its successors and assigns; and the said party of the first part, for itself and its successors, hereby covenants and agrees to execute and deliver any further reasonable and necessary conveyance of the said premises, or any part thereof, to the said parties of the second part, their successors in said trust and assigns, which counsel may advise, for the more fully conveying said premises and carrying into effect the objects & purposes of these presents and of making them embrace the property and effects conveyed or intended to be conveyed; at the end of every six months, commencing on the first day of January, in the year one thousand — and eighty, the sum of twenty thousand dollars shall be reserved out of the net earnings of their railroad by the said party of the first part, and within
sixty days thereafter be paid over to said trustees, their suc-
96 cessors in said trust and assigns, as a sinking fund for the redemption of the bonds secured by these presents; said trustees shall at once deposit the said sum so paid over to them in the Massachusetts Hospital Life Insurance Company of the city of Boston, or in some other safe and responsible depository in the said city, and the said moneys, together with all the accumulations of interest thereon, shall be invested by said trustees in the purchase of the bonds secured by these presents, provided the same can be obtained at not above par and accrued interest; and the bonds so purchased shall be deposited with the said trust company, or such other safe and responsible depositor-s as said trustees may from time to time decide upon, and be immediately registered, stamped, or indorsed as belonging to said sinking fund, but shall remain in force, and the interest thereon shall continue to be paid by the said party of the first part, its successors and assigns, and the amount of such interest shall be added and applied as a part of the capital of the sinking fund hereby established and be invested in the purchase of other bonds in the same manner as the semi-annual payments of

twenty thousand dollars, as hereinbefore provided for; and, preparatory to such respective purchase of bonds, the said trustee shall give twenty days' notice thereof in one or more of the daily newspapers published in the cities of New York and Boston at least once a week, and shall make said purchase at the lowest
97 price or prices at which the bonds may be offered pursuant to said notice, but not exceeding par and accrued interest, and in case the said bonds cannot be purchased at such rate within three months after the expiration of the notice aforesaid, then the said money shall be invested in these bonds at a higher rate, or in such other manner as the trustees may deem proper. It is hereby mutually agreed that upon the payment of the principal and interest of said bonds of the estate hereby granted to the said parties of the second part—shall be void, and the right to the premises and property hereby conveyed shall revert to and revest in the said party of the first part, its successors and assigns, without any acknowledgement of satisfaction, reconveyance, re-entry, or other act. It is hereby mutually agreed and understood, for the purpose of this deed of trust and mortgage and the benefit of the holder of the bonds hereby secured, that said bonds shall be issued and sold only as the construction and equipment of the road progresses at the rate of twenty thousand dollars of said bonds per mile of the main line of said road, to which end the said parties of the second part hereby agree not to cert'y the said bonds, except as the proceeds are intended to be used for the completion of a section or a piece not above
98 twenty miles long of said road and not until they are satisfied that the construction of said section or piece of road is so far advanced that the proceeds of said bonds will be sufficient to complete it and furnish so much equipment as to make the whole rolling-stock upon the completed portion of the road of the value of not less than the proceeds of three thousand dollars of bonds per mile of its length. The party of the first part further agrees at all times to keep an office or agency in the city of Boston for the payment of the principal and interest of the bonds hereby secured as the same shall become payable, and provide for the transfer and registration of said bonds at the said agency in the city of Boston, and also for the transfer of the stocks of said company; and it is also hereby mutually agreed that the said parties of the second part, their successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of each other or any agent employed by them when such agent shall have been employed with reasonable discretion, and the said party of the second part, and their successors in said trust and assigns, shall be entitled to reasonable compensation for their labor and services in the management of said trust. It is further agreed and understood that in case of the death, mental incapacity, resignation, neglect, or refusal to act of either of the said trustees, which incapacity,
99 neglect, or refusal shall be considered conclusively determined by the unanimous vote of the directors and a majority of the trustees in the matter of said trust, all his right, estate, in-

terest, power, and control in the premises shall be divested, cease, and determine, and the said railway company and the remaining trustee or trustees may mutually agree upon a new trustee to supply the said vacancy, or failing to take proceedings therefor, or failing so to agree for thirty (30) days, the holders of one-tenth of said bonds may apply to any court or courts in said States of Iowa or Missouri having jurisdiction of the premises to appoint a new trustee to supply said vacancy, and such new trustee appointed in the manner aforesaid shall become vested for the purposes aforesaid with all the right and interests requisite to enable him to execute with the purposes of this trust without any further assurance or conveyance of the same. But, should it be desirable or necessary, the said parties hereto shall all execute and deliver such releases and conveyances as counsel shall advise, it being further expressly understood that the surviving trustee or trustees shall be fully empowered to execute all the purposes of this trust until said vacancy shall be so supplied. It is also expressly understood and agreed that said bonds shall have each affixed thereto the proper stamp required by the laws of the United States, and that they shall stand equally secured by
100 this mortgage, though made, issued, and sold at different times, and that no bond shall be deemed to be secured by or issued under this mortgage unless the same is certified by the trustees herein named, or their successors in said trust, or a majority of them, and that the proceeds of the above-mentioned bonds of said first party shall be applied to the construction, completion, and equipment of the aforesaid railroad in the manner herein provided, and for no other purpose whatsoever. And the said parties of the second part hereby accept the trust created by these presents. It is also understood and agreed that all the duties, rights, and powers conferred hereby upon the trustees, parties of the second part, may be discharged, exercised, and performed by a majority of them, and that a majority in all cases transact the business of the trust hereby created. In witness whereof the said Burlington and Southwestern Railway Company has caused its corporate seal to be hereto affixed and these presents to be attested by the signatures of its president and secretary, and the parties of the second part have hereunto subscribed their names to testify the acceptance of the said trust, on the day and year first above written.

JOSHUA TRACY, *President.*

[SEAL.] P. HENRY SMYTHE, *Secretary.*

We hereby accept the trust conferred upon us, as indicated in the foregoing mortgage or deed of trust.

101 J. W. BROOKS.
ALPHEUS HARDY.
J. F. FOY.

Acknowledgement.

STATE OF IOWA, } ss:
County of Des Moines, }

This is to certify that on this twenty-second day of December, A. D. 1870, before me, the undersigned, a notary public in and for said county and State, duly commissioned and qualified, residing at Burlington, in said county and State, appeared Joshua Tracy, president, and P. Henry Smythe, secretary, of the Burlington and Southwestern Railway Company, to me personally well known to be such president and secretary; and I further certify that they respectively signed the foregoing mortgage or deed of trust in their official capacity as such officers, and that they affixed the seal of said company to said deed of trust by authority of the board of directors of said railway company, and they severally acknowledged the execution of said deed of trust in behalf of said company as its voluntary act and deed; and I further certify that the said Joshua Tracy, president, and P. Henry Smythe, secretary, are to me personally well known to be the identical persons who signed the foregoing instrument, and the seal thereto attached is the corporate seal of said company.

Witness my hand and official seal hereto affixed the day
102 and year first aforesaid.

[SEAL.] R. M. GREEN, *Notary Public.*

Filed for record May 4th, 1872.

MILTON CANBY, *Recorder.*

Def't offers the decree of the United States — court, western dist. of Missouri and eastern division, in the case of the Farmers' Loan and Trust Company *vs.* Burlington & Southwestern railroad, and appointing Elijah Smith receiver of the branch line; which said decree is in words and figures following, to wit:

Decree U. S. D. Court App't. E. Smith Rec. Branch Line.

In the Circuit Court of the United States for the District of Missouri.

JOHN W. BROOKS and ALPHEUS HARDY
vs.
THE BURLINGTON AND SOUTHWESTERN RAILWAY COMPANY *et al.*

and

THE FARMERS' LOAN & TRUST COMPANY
vs.
THE BURLINGTON & SOUTHWESTERN RAILWAY COMPANY *et al.*

Now come the plaintiffs, by their attorneys, Grant & Smith, and the defendants, The Burlington & Southwestern Railway Company, Orwin W. Potter, Geo. H. Wyman, T. C. Owen, & Samuel R. Munford, executors of the estate of Eber B. Ward, deceased; J. W. Barnes, J. N. Martin, S. & J. C. Atlee, & John O. Smyth, by Owen, Smyth, Hall, Blake and
103 Hedge, their attorneys, and by consent of said parties the following decree is made in vacation as of the last term & in

term time, Gen. N. B. Baker, a receiver appointed by the Federal court, having resigned by the consent & approval of the parties, plaintiffs and defendants, Elijah Smith is appointed receiver of all the property of the Burlington & Southwestern Railway Company which is situated within the western district of Missouri, and all real and personal property, books, papers, vouchers, moneys, & accounts of said corporation, and said Elijah Smith presents his bond as such receiver, which is approved by the judge signing this order, and said Receiver Baker & all persons having possession or control of any of the property of said corporation in Missouri or elsewhere under the control of this court are required to deliver the same to said Elijah Smith. It is ordered & adjudged that Elijah Smith, the aforesaid receiver, is authorized and empowered to borrow any sum of money not exceeding two hundred thousand dollars, to be a preferred lien on all the property of said railway company in Missouri over all other creditors by judgment or mortgage lien, which sum of money, or so much of it as may be required, is to be expended by said receiver under the direction of this court, and all the accounts therefore to be audited and approved by one of the
104 judges of this court, or a master to be appointed by one of said judges in building, completing, and equip-ing the unfinished portion of said railway between Unionville and Laclede, or Stanley City, in Missouri. And said receiver is authorized to issue receivers' certificates of indebtedness on bonds, with interest payable annually, & running for a term not exceeding ten years, which said receivers' certificates or bonds may hereafter, by consent of the holders thereof, be exchanged for bonds or other securities of any corporation which may become the purchaser of said railway property on any sale thereof which may hereafter take place by order of this court, and said receiver shall within forty days from the date of his appointment prepare and file in this court a complete inventory of all the real and personal property of said railway corporation, and of all the debts and obligations of said corporation in the order of liens or preference. And said receiver is required to protect, preserve, & use & operate said railway property for the benefit of the owners thereof, & for public use, and it is ordered that he make to this court on the 15th day of each month, or as soon thereafter as the accounts can be prepared, an account current of the receipts & operating expenses of said road, and file the said account with the clerk thereof.

And he is also directed to make monthly reports of the expenditures in building, completing, & equip-ing the said un-
105 finished part of the said road, and to keep the money borrowed by virtue thereof separate from money received from other sources.

And the said receiver is hereby authorized to pay all due and unpaid taxes now existing against said railway company, and to prosecute and defend all suits in law or in equity in which the interest of the property or parties are involved. The certificates of indebtedness herein authorized to be created are the certificates authorized to be issued by the circuit court of the United States for the district

of Iowa, and there are to be only two hundred thousand dollars issued by the joint authority of both courts, and all of them are to be countersigned by the clerk of the circuit court of the United States for the district of Iowa, who is required to keep a registry of the same. And the court also reserves to itself the right to adjust the equities of the application of the prior liens of two hundred thousand dollars hereby created between the main line and the branch of said railway, should any difficulty hereafter arise, without, however, diminishing the security of the certificates hereby created. And the rights of Wells, French & Co. claiming a mechanics' lien in the State of Missouri are reserved, and not to be affected by the lien herein created by reason of said certificates.

JOHN F. DILLON, *Judge.*

106 *Indorsements on Appointment of Elijah Smith Rec'r.*

Endorsed upon the above is the following, to wit:

296,297. In circuit court United States for the west. dist. of Missouri. J. W. Brooks & Alpheus Hardy *vs.* The Burlington & Western Railway Co. *et al.* and the Farmers' Loan and Trust Co. *vs.* The B. & S. W. R'y Co. *et al.* Decree appointing Elijah Smith rec'v'r and authorizing the issue of $200,000 certificates of indebtedness. Filed Oct. 19th, 1875. H. C. Geisburg, cl'k.

Decree of Foreclosure.

In the Circuit Court of the United States for the Western District of Missouri, at Jefferson City. April Term, 1876. In Equity.

THE FARMERS' LOAN AND TRUST CO.

vs.

THE BURLINGTON & SOUTHWESTERN RAILWAY COMPANY, EBER B. Ward's Executors, Wells, French & Co., J. W. Barnes, J. H. Martin, Joseph Combs, John H. Wilkerson, Marion Caves, H. C. Provit, Casperson & Combs, Casperson & Son, W. W. Davis, Warren, McCullough & Beebe, H. L. Thompson, John Q. Boner, Edmund Ash, Joseph Stanley, J. Bupper, E. Burkman, Thomas
107 Laublad, Lewis Elley, J. A. Quailley, S. J. Boone, John L. Runnels, B. F. Northcut, E. D. Edwards, G. D. Bupp, John T. Heath, and Others.

This cause came on now to be heard after bill and amendments, cross-bills and amendments, answers to bills, amendments, cross-bills and amendments thereto, replications, exhibits, and reports of the special master appointed at the last term of this court—Grant, for the plaintiffs; Hatfield, for the B. & S. W. R'y Co., appears, withdraws answers and cross-bills, and confess- allegations of the bill; Smythe, for Ward's executors, *and* withdraws answer and cross-bill and consent- to decree; Muller, Butler, Lay, Belch appear for Combs, Wilkerson, and others, claiming liens or judgments in Missouri; Hall & Baldwin, for Wells, French & Co. and Barnes and Martin; and thereupon the court, having duly considered the master's re-

port, confirms and approves the same as to the facts found by him, and upon the law arising on said facts finds that Warren McCullough has a mechanics' lien, under the act of 21st March, 1873, for 4,912 ties furnished to said railroad company at the price of 30 cents each, making the sum of $1,719\frac{20}{100}$ dollars: that Casperson and Combs have a like lien for 2,196 ties furnished to said com-
108 pany after the passage of said act at 30 cents per tie, making $769.\frac{80}{100}$; that W. L. Thompson and McCullough and Beebe have a like lien on 3,814 bridge ties furnished to said railroad Co. at the price of 50 cents each, making the sum of $1,907.00.

That on said ties McCullough & Beebe have a lien of 13 cents a tie for sawing the same, and making the sum of $495, part of said $1,907, and it appearing from the answer of McCullough and Beebe that a portion of said sum of $495 has been paid, and that the balance thereon was due to them on the 18th day of October, 1874, the sum of 356.70, and which sum is to be deducted out of said $1,907.00 or a private share thereof; that said liens of Warren McCullough, H. L. Thompson & McCullough & Beebe are a preferred lien on said ties furnished by them to the lien of the plaintiffs under their mortgages, and a second lien subsequent to said mortgage on the other property included in the same, and upon the sale which is to be made of said mortgaged property, as hereinafter set out, the master will sell said 4,912 ties separate from the other property, and apply the proceeds of such sale in payment of said lien of Warren McCullough, and said master will sell said 2,196 ties in like manner and apply the payment to said Casperson & Combs, and that he will sell
109 said 3,812 bridge ties separate from the rest of said property and apply the proceeds of said sale to the payment of the lien thereon in favor of McCullough & Bebee and H. L. Thompson in the proportion above set forth. And it is further ordered and decreed that all the sales under said judgments or attachments of Combs, Wilkison, Cave, Provit, Bowen, McCullough, McCullough & Bebee, H. L. Thompson, Casperson & Combs, Casperson & Son, John Q. Boner, W. W. Davis, and others of said ties or any other property of said Burlington & Southwestern R'y Co. be set aside and annulled, and that said judgments in the State courts shal- stand as record liens to said mortgage, giving to said holders thereof a right to redeem said mortgage and their cross-bills, except those of Warren McCullough, McCullough & Bebee, & H. L. Thompson, — are dismissed at their costs; and as to the costs of Warren and McCullough, McCullough & Bebee, & H. L. Thompson the same are to be paid by the Burlington & Southwestern Railway Co. or deducted, if not paid by them, out of the proceeds of the sale of said ties.

And it is ordered that all the purchases under the sales of said judgments set out in the defendants' answers be set aside and annulled and all the property not yet delivered to the receiver be delivered to him by the purchasers under said sales.

110 And the court further finds, as matter of law, that the said D. L. Wells, H. L. Norton, E. C. French, and F. E. Walker, composing the firm of Wells, French & Co., and James N. Martin and J. W. Barnes are not entitled under the laws and statutes of the

State of Missouri to mechanics' liens upon the property of the said railway Co. situate and extending into said State, as claimed by them for labor performed and material furnished by them respectively under their respective contracts, as alleged & set forth in the construction of said railroad, and that the equity in said cause is with the complainants upon the issues of the original bill and the cross-bill. It is therefore ordered, adjudged, and decreed by the court here that the cross-bill of the said Wells, French & Co. and of said J. N. Martin and J. W. Barnes do stand dismissed out of this court with the costs made and accruing upon the issues of their answer and cross-bills respectively, taxed against them respectively. But it is ordered, adjudged, and decreed that this decree is without prejudice to the said Wells, French & Co. and said Martin and J. W. Barnes, or either of them, to proceed in any court or courts of law or in equity to enforce their several contracts and recover thereon any sum or sums due them, and to establish mechanics' liens therefore upon any part or portion of the property of the said R'y Co. situate or lying within the State of Iowa, and
111 said decree shall be without prejudice to any right or claim of priority of such mechanics' liens claimed or asserted by said parties or either of them over the mortgage of the said complainants herein upon the property of the said railway in Iowa, but said parties or either of them shall be at liberty to proceed in any cause now pending or hereafter brought in any court in the State of Iowa to recover the amounts due them and to establish mechanics' liens for labor performed and material furnished in the construction of said railroad upon the property of said railway in the State of Iowa, and to recover and obtain such other and further relief in that respect against the complainants, the defendants, or either of them as may be decreed necesssary and proper, as if this decree had not been ordered, signed, and enrolled. And the court finds that there is due the plaintiff, as trustee under said mortgage of the Linneus Branch of the Burlington [&] Southwestern Railway Company, executed on the 1st April, 1872, the principal sum of one million six hundred thousand dollars ($1,600,000), which is evidenced by 1,600 bonds of $1,000 each, payable to bearer, and there is due for interest on said bonds, at the rate of seven per cent., from the said first day of April, 1872, to the 20th day of May, 1876, making the sum of $454,222.00 for interest, and a total principal
112 and interest of $2,054.222.00, which sum bears interest at seven per cent. per annum from the 20th of April, 1876, and the above sum with interest & cost, taxed at —, it is ordered and decreed that the defendant, The Burlington & Southwestern R'y Co., pay to the plaintiffs within ten days from the 20th of May, 1876, and in default thereof any of the other defendants, creditors by judgment or mechanics' lien claims allowed by this court, are permitted to redeem said mortgage, in the order of priority of their liens, by the payment of said sums in ten days thereafter, and upon such payment it is ordered that said plaintiffs convey by proper deed all the right, title, and interest which the plaintiffs acquired to said mortgaged property by virtue of their mortgage to the party redeem-

ing said debt. And upon default of said payment and failure to redeem said premises it is ordered and decreed that the equity of redemption of all said defendants to the mortgaged estate be forever barred and foreclosed, which mortgaged estate is described as follows: All the real and personal property of said Burlington and Southwestern Railway Co. in said Linneus Branch railroad owned at the date of said mortgage and since acquired in any manner appertaining to said branch, and all the right, title, and equity of redemption therein, whether of said company or the stockholders thereof, in said branch or any premises leased therewith, all the branch railroad, including the premises
113 leased, named in said mortgage, extending from the main line of said Burlington [&] Southwestern Railway Company, at or near Unionville, in the county of Putnam, in the State of Missouri, by the way of Linneus and Lexington to Kansas City, and by the line of said leased premises from Lexington to Butler, in Bates county, Missouri, and to such other points in Southwestern Missouri as was determined upon by the board of directors of said company, or however said branch line of said railroad, including said leased premises, may be described or built, including the right of way therefor, road-bed, superstructure, iron, ties, cha-ns, splices, bolts, nuts, spikes, and all the lands and depot grounds, station-houses, depots, viaducts, bridges, timbers, and material and property purchased and to be purchased or otherwise acquired after the date of the mortgage for the construction and maintenance of said railroad, and all the engines, tenders, cars, and machinery, and all kinds of rolling-stock owned at the date of said mortgage or thereafter purchased for and on account of said branch; all the revenues and income of said branch, and all the rights and privileges and franchises relating thereto and property acquired in virtue thereof then in possession or thereafter acquired, including machine-shops,
114 implements, personal property, and — therein or along the line of said branch railroad, together with all the property acquired by said B. & S. W. R'y Co. by virtue of its lease of said Lexington, Lake and Gulph R. R., and which branch line of said leased road and premises extending from Unionville by the way of Linneus to Kansas City and Southwestern Missouri, is known and designated as the Linneus Branch of the B. & S. W. railway.

And the receiver of said property is required to render to the master herein appointed an account of the income and expenses of said branch railroad from the date of the appointment to the day of sale, and any balance in his hands is to be paid to the master, and by him credited on the amount due on said mortgage, and the property is to be sold for the satisfaction of the residue, and the said sale is to be made subject to the lien created by order of this court for receivers' certificates or debentures to an amount not exceeding $200,000 for the purpose of completing about twenty-three miles of said branch south of Unionville, and Harvy Lacy is hereby appointed a special master to sell the property above described in said mortgage, as well as the ties, allowed on the lien claims of Warren McCullogh, H. L. Thompson, and McCullough & Bebee, and he is

ordered to cause sale to be advertised in a short form, to take place at such place as he may designate in Putnam county near the
115 line of Iowa; the advertisement to be made for four successive weeks, before the day of sale in one newspaper published in the city of Boston and one published in said district, said papers to he selected by the master; and before entering upon the duties of said office the master shall give bond, to be approved by one of the judges of this court, in the sum of fifty thousand dollars ($50,000), conditioned, for the faithful performance of his duties; and upon the said sale the master is authorized to receive bids, payable in cash or in the bonds secured by the said mortgage, and if the highest bid shall be for cash alone the purchaser shall pay to the master the sum of $50,000, to be by him deposited in some bank of his selection and reported forthwith to this court; and at said sale the said John W. Brooks and Alpheus Hardy, trustee-, or such other agent as the majority of said bondholders may appoint, are authorized to bid at the request of a majority of said bondholders, and afterwards convey to such corporation as said majority may direct for said mortgaged property, in trust for all the holders of said mortgaged bonds, or such of them as may in writing assent thereto; and upon said bid to pay for the same in bonds of said corporation, and such of said bondholders as do not assent & sign, the authority to make such bid and purchase are allowed six months from the day
116 of sale to deposit their bonds with their master and assent to said sale and receive their *pro rata* share of the property in such corporation as the bondholders may organize to own and operate the same, and upon the refusal of any bondholders to accept their share of said bid and purchase they shall be paid by the assenting parties, through the master or by deposit in court for them, their *pro rata* share of cash on the amount of said bonds held; and all the bondholders assenting to said sale and purchase for their benefit shall be liable for the then *pro rata* share of receivers' certificates heretofore authorizes, so far as the same may be issued prior to the confirmation of the sale; and said sale shall be made by the said master without valuation and appraisement and without the right of redemption after sale; and said master is directed and required, out of the proceeds of said sale, to pay all the costs and expenses of said foreclosure and sale proper, including attorneys' fees and fees of trustees, the same to be first approved by a judge of this court; and said master is ordered to prepare for the purchaser a deed of said property when sold by him and present the same, together with a report of his sale, to this court or a judge thereof for approval. The right to make further orders herein is reserved.

JOHN F. DILLON, *Judge*.

Endorsed upon the foregoing is the following, to wit:

117 Indorsement: 297. In the circuit court of the United States for the western district of Missouri. 297. The Farmers' Loan & Trust Company *vs.* The Burlington & Southwestern Railway Company *et. al.* Decree of foreclosure. Filed May 19th, 1876. H. C. Geisberg, clerk. Grant & Smith, Davenport, Iowa, solicitors for trustees.

Certificate of Clerk of U. S. D. C't.

UNITED STATES OF AMERICA, }
Western District of Missouri, Eastern Division, } *sct:*

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, dc hereby certify that the foregoing writing is [are] a true copies of the decree appointing Elijah Smith receiver, filed October 19th, 1875, and the decree of foreclosure and order of sale, filed May 19, 1876, in case 297, Farmers' Loan & Trust Co. *vs.* The Burlington & Southwestern R'y Co. *et. al.*, as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of Jefferson, in said district, this 2d day of December A. D., 1882.

[SEAL.] H. C. GEISBERG, *Clerk.*

Upon the foregoing certificate is the following endorsement, in words and figures following, to wit:

118 Indorsement: Case No. 297. U. S. circuit court, western district of Missouri, eastern division. The Farmers' L. & T. Co. *vs.* The B. & S. W. R'y Co. *et. al.* Duly certified copy of the decree appointing Elijah Smith rec'r, and decree of foreclosure in the above-entitled cause.

Def't offers decree from the U. S. — court, western district of Missouri, eastern division, in the case of John W. Brooks and others, foreclosing the mortgage on the main line and appointing Elijah Smith as receiver, which is in words and figures following, to wit:

Decree U. S. D. C't, in Case Brooks et. al., Foreclosing Mort. on M. Line & App. Smith Rec.

In the Circuit Court of the United States for the — District of Missouri.

JOHN W. BROOKS and ALPHEUS HARDY

vs.

THE BURLINGTON & SOUTHWESTERN RAILWAY COMPANY

and

THE FARMERS' LOAN & TRUST COMPANY

vs.

THE BURLINGTON & SOUTHWESTERN RAILWAY COMPANY *et. al.*

Now come the plaintiffs, by their attorneys, Grant & Smith, and the defendants, The Burlington & Southwestern Railway Company, Orwine W. Potter, Geo. H. Wyman, T. C. Owen, & Samuel R. Munford, executors of the estate of Eber B. Ward, deceased; J. W. Barnes, J. N. Martin, Sr., J.
119 C. Atlee, & John O. Smythe by Owen, Smyth, Hall, Blake & Hedge, their attorneys, and by consent of said parties the

following decree is made in vacation as of the last term and in term time. Gen. N. B. Baker, a receiver appointed by the Federal court, having resigned by the consent and approval of the parties, plaintiffs & defendants, Elijah Smith is appointed receiver of all the property of the Burlington & Southwestern Railway Company which is situated within the western district of Missouri, and all real and personal property, books, papers, vouchers, moneys, & accounts of said corporation; and said Elijah Smith presents his bond as such receiver, which is approved by the judge signing this order; and Receiver Baker & all persons having possession or control of any of the property of said corporation in Missouri, or elsewhere under the control of this court, are required to deliver the same to the said Elijah Smith. It is ordered and adjudged that Elijah Smith, the aforesaid receiver, is authorized & empowered to borrow any sum of money not exceeding two hundred thousand dollars, to be a preferred lien on all the property of said railway company in Missouri, over all other creditors by judgment or mortgage lien, which sum of money, or so much of it as may be
120 required, is to be expended by said receiver, under the direction of this court, and all the accounts therefor to be audited & approved by one of the judges of this court, or a master to be appointed by one of said judges, in building, completing, & equipping the unfinished portion of said railway between Unionville & Laclede or Stanley City, in Missouri; and said receiver is authorized to issue receivers' certificates of indebtedness or bonds, with interest, payable semi-annually, & running for a time not exceeding ten years, which said receivers' certificates or bonds may hereafter, by consent of the holders thereof, be exchanged for bonds or other securities of any corporation which may become the purchaser of said railway property on any sale thereof which may hereafter take place by order of this court; and said receiver shall, within forty days from the date of his appointment, prepare and file in this court a complete inventory of all the real [and] personal property of said railway corporation, and of all the debts & obligations of said corporation in the order of liens or preferences; and said receiver is required to protect, preserve, & use and operate said railway property for the benefit of the owners thereof, and for public use, and it is ordered that he make to this court on the 15th day of each month, or as soon thereafter as the accounts can be prepared,
121 an account current of the receipts and operation expenses of said road and file the said account with the clerk thereof; and he is also directed to make monthly reports of the expenditures in building, completing, & equip-ing the said unfinished part of the said road, and keep the money borrowed by virtue hereof separate from money received from other sources; and the said receiver is hereby authorized to pay all due and unpaid taxes now existing against said railway company, and to prosecute & defend all suits in law or in equity in which the interests of the property or parties are involved.

The certificates of indebtedness herein authorized to be created are the certificates authorized to be issued by the circuit court of the

United States for the district of Iowa, and there are to be only two hundred thousand dollars issued by the joint authority of both courts, and all of them are to be countersigned by the clerk of the circuit court of the United States for the district of Iowa, who is required to keep a registry of the same; and the court also reserves to itself the right to adjust the equities of the application of the prior lien of two hundred thousand dollars hereby created between the main line & the branch of said railway, should any difficulties hereafter arise, without, however, diminishing the security of the certificates hereby created; and the rights of Wells, French & Co., claiming a mechanic's lien in the State of Missouri, are reserved and not to be effected by the lien herein created by reason of said certificates.

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(Signed) JOHN F. DILLON, *Judge.*

Endorsed on back: 296–297. In the circuit court of the United States for the western district of Missouri. J. W. Brooks & Alpheus Hardy *vs.* The Burlington & Western Railway Co. *et al.*, and The Farmers Loan & Trust Co. *vs.* The B. & S. W. R'way Co. *et al.* Decree appointing Elijah Smith receiver and authorizing the issue of $200,000 certificates of indebtedness. Filed Oct. 19, 1875. H. C. Gisberg, clerk.

Decree of Foreclosure.

In the Circuit Court of the United States for the Western District of Missouri, at Jefferson City. April Term, 1876. In Equity.

JOHN W. BROOKS and ALPHEUS HARDY

vs.

123 THE BURLINGTON & SOUTHWESTERN RAILWAY COMPANY, James F. Joy, The Farmers' Loan and Trust Company, The Murray Iron Works, Wells, French & Co., H. A. Sumner, and J. N. Martin & Others.

This cause came on now to be heard on the bill & amendments, answers and amendments, cross-bill and answers, replications, and exhibits, James Grant appearing for the plaintiffs. Smythe appears for the executors of E. B. Ward, & withdraws answer & cross-bill and consents to decree. Hatfield appears for the Burlington and Southwestern Railway Co., and withdraws answer and cross-bill and consents to decree.

The court finds, as matter of law, that Wells, French & Co. are not entitled, under the laws & statutes of the State of Missouri, to a mechanics' lien upon the property of the said railway Co. situate & extending into said State of Missouri, as claimed by them, for labor performed and material furnished by said firm under their said contract and set forth in the construction of said Burlington and Southwestern R. R., and that the equity of said cause is with the complainants upon the issues of the original bill and cross-bill.

124 It is, therefore, ordered, adjudged, and decreed by the court here that the cross-bill of the said Wells, French & Co. do stand dismissed out of this court, with the costs made & accruing upon the issues of their answer and cross-bill taxed against them; but [it] is ordered, adjudged, and decreed by the court here that this decree is without prejudice to the said Wells, French & Co. to proceed in any court or courts at law or in equity to enforce their said contract and recover thereon any sum or sums due them, and to establish a mechanics' lien therefor upon any part or portion of the property of the railway company situate or lying within the State of Iowa, and said decree shall be without prejudice to any right or claim of priority of said mechanics' lien claimed or asserted by said parties over the mortgage of the complainants herein upon the property of the said railway in Iowa; but said parties may be at liberty to proceed in any cause now pending or hereafter brought in any court in the State of Iowa to recover the amount due them, and to establish a mechanics' lien there for labor performed and materials furnished in the construction of said railroads upon the property of said railway in Iowa, and to recover and obtain such other and further relief in that respect against the complainants, the defendants, or either of them, as may
125 be deemed necessary and proper—as if this decree had not been ordered, signed, and engrossed; and as to the other defendants the court finds the equity of the case is with the plaintiffs, and the liens claimed by the parties are postponed to those of the plaintiffs, and the court finds that there is due to the plaintiffs as trustee, under the mortgage set out in the bill dated 1 November, 1870, the sum of one million eight hundred thousand dollars ($1,800,000) principal, which is witnessed by eighteen hundred (1,800) bonds, payable to bearer, of one thousand dollars ($1,000) each, and the interest on said sum from the 1st of May, 1873, at the rate of eight per cent. per annum—to the sum of four hundred & thirty-two thousand dollars ($432,000), making a total sum of two million two hundred and thirty-two thousand dollars ($2,232,000) due on the first day of May, 1876, bearing interest at the rate of eight per cent. per annum; which sum, with interest at the rate of 8 per cent. per annum and costs taxed at —, it is ordered and decreed that the Burlington and Southwestern Railway Company pay to said plaintiffs within 30 days from said first of May, 1876, and in default of payment by them that the Farmers' Loan and Trust Company holding a second mortgage, or any of the other defendants, judgment creditors holding judgments in said
126 State, may redeem, in the order of their judgment, within ten days thereafter.

And upon said payment it is ordered and decreed that the plaintiffs convey to the party redeeming all their rights to the mortgaged premises named in the petition, and upon the failure to redeem said premises it is ordered and decreed that the equity of redemption of said defendants be barred and foreclosed, and that the mortgaged estate described in said mortgage—as follows: "All the present and thereafter to be acquired property of the Burlington

and Southwestern railway, including all the railroad then made and after the date of said mortgage to be constructed, extending from Burlington, in the State of Iowa, to the western line of the State of Missouri, at or north of St. Joseph, or however otherwise described and built, including the rights of way therefor, road-beds, superstructure, iron, ties, chains, splices, bolts, nuts, spikes, and all lands and depot grounds, station-houses, depots, viaducts, bridges, timber, and materials and property purchased or to be purchased or otherwise acquired for the construction and maintenance of the said railroad, and all the engines, tenders, cars, and machinery and all kinds of rolling-stock now owned or to be hereafter purchased by said railway Co. for and to be used on said railroad, and
127 all the revenues and income of said railway company, and all the rights, privileges, and franchises of said railway company relating thereto and properly acquired by virtue thereof at the date of said mortgage in possession thereafter acquired, including machine shops, tools, implements, and personal property *and* thereon or along the line of said railroad."

And the receiver of said property is required to surrender to the master herein appointed an account of the income and expenditures for said road from the date of his appointment up to the day of sale, and any balance in his hands is to be paid to the master, and by him credited on said amount due, and the property is to be sold for satisfaction of the residue.

And Harry Lacey is hereby appointed a special master to sell the property above described, and he shall cause the same to be advertised by a short form and sold at such place in Putnam county, Missouri, in said district, as he may select, the advertisement to be made for the period of four successive weeks before the day of sale in one newspaper published in said district and one in the city of Boston, said papers to be selected by the said master; and
128 before entering upon the discharge of the duties of his office the master shall give bonds with — sum of fifty thousand dollars ($50,000), to be approved by the judge or one of the judges of this court, or by the clerk thereof, and upon sale the master is authorized to receive bids, payable in cash or in said bonds *pro rata* as the number of bonds offered to him shall bear to the whole bid; and if the highest bid shall be for cash alone the purchaser shall pay to the master fifty thousand dollars ($50,000) down, to be reported to this court by the master forthwith; and the said trustees are authorized and empowered at said sale, at the request of a majority of the bondholders, to bid for said property, and convey the same to such company as they may organize and pay for said bid, said bonds, either in whole — part, in — proportion of bonds to cash; and if such bid is made by said trustees all the bondholders shall have six months to deposit their bonds with said trustees or said master, and accept their *pro rata* share of the property included in said mortgage, and upon their refusal to accept of the benefit of said bid in bonds and a *pro rata* share of interest in the property shall be entitled to their *pro rata* share of said bid in cash, and said

sale shall be made by said master without right of redemption or appraisement.

129 And said master is directed out of the proceeds of said sale to pay all the costs and expenses of said foreclosure and sale, including trustees' and attorneys' fees, and he is directed to prepare for the purchaser a deed of said property when sold by him, and present the same to the court or a judge thereof in vacation, and to present an account of the expenses of said foreclosure and sale at the same time to said court or judge in vacation for approval.

And said sale is to be made subject to a lien created by order of this court for certain receivers' certificates authorized to be issued for the sum of not over two hundred thousand dollars ($200,000) for the purpose of completing an unfinished part of said road from Unionville south, and if said trustees shall purchase said road for the benefit of said bondholders all of those who assent thereto and accept the benefit of said sales shall be required to pay their *pro rata* share of said receivers' certificate- that may be a lien on said road at the date of said sale. It appearing to the court from the mortgage foreclosed that a large part of the said road located in Iowa and that foreclosure proceedings are pending in the U. S. circuit court in that State, it is ordered and decreed that any purchase made under this decree of the road in this State shall be

130 subject to the same provisions which may be made for the benefit of the bondholders in the decree of the sale of that part of the road which is in the State of Iowa.

The right to make further orders herein is reserved.

(Signed) JOHN F. DILLON, *Judge.*

Indorsement.

Endorsed on back: 296. In the circuit court of the United States for the western district of Missouri. John W. Brooks and Alpheus Hardy *vs.* The Burlington and Southwestern Railway Company *et al.* Decree [of] foreclosure. Filed May 19, 1876. H. C. Geisberg, clerk.

Certificate of Cl'k U. S. D. C't.

UNITED STATES OF AMERICA,)
Eastern District *of the Western District of Missouri,*) *sct:*

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the fore-

131 going writing is a true copies of the order appointing Elijah Smith receiver, filed October 19th, 1873, and the decree of foreclosure, filed May 19th, 1876, in the cause therein named as fully as the same remains on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at office, in the city of Jefferson, in said district, this 10th day of August, 1885.

[SEAL.] H. C. GEISBERG, *Clerk.*

Indorsement on Decree of Foreclosure.

The following is endorsed upon the foregoing in words and figures following, to wit: No. 296. U. S. circuit court, western district of Missouri, eastern division. J. W. Brooks *et al. vs.* Burlington & S. W. R'y Co. *et al.* Duly certified copy of the order appointing Elijah Smith receiver and the decret of foreclosure in the above-entitled cause.

Defendant offers the deed and supplemental deed *to* Elijah Smith to the — branch, which said deed referred to is in words and figures following, to wit:

Master's Deed.

This indenture, made this 13th day of December, A. D. 1880, between Harry Lacey, master in chancery of the circuit court of the United States for the western district of Missouri, party of the first part, and Elijah Smith, trustee, of Boston, Massachusetts, party of the second part, witnesseth:

132 Whereas, in pursuance of a decree entered on the nineteenth (19) day of May, A. D. 1876, by the circuit court of the United States for the western district of Missouri, in a certain case then pending therein, on the chancery side thereof, wherein the Farmers' Loan and Trust Company was complainant and the Burlington and Southwestern Railway Company and others were defendants, the said master in chancery duly advertised according to law and the direction of said decree the premises hereinafter described for sale at public auction to the highest and best bidder, at Unionville, in Putnam county, Missouri, at the north door of the court-house, between the hours of ten (10) o'clock a. m. and four (4) o'clock p. m. on the thirtieth (30) day of November, A. D. 1880;

And whereas, at the time and place so as aforesaid appointed for said sale, the said master in chancery attended to make the same and offered and exposed said franchises for sale at public auction to the highest and best bidder, and thereupon Elijah Smith, trustee, offered and bid therefore the sum of one million dollars ($1,000,000) in Linneus Branch bonds, and, that being the highest bid offered, said master in chancery accordingly struck off and sold to said Elijah Smith, trustee, for said sum of bonds the said premises;

133 And whereas said premises have not been redeemed from said sale:

Now, therefore, in consideration of the premises, the said party of the first part doth hereby convey unto the said party of the second part, his heirs and assigns, the said premises, which are situated in the State of Missouri and described as follows, to wit:

All the real and personal property of said Burlington and Southwestern Railway Company in said Linneus Branch railroad owned at the date of said mortgage and since acquired in any manner appertaining to said branch and all the right, title, and equity of redemption therein, whether of said company or the stockholders thereof, in said branch or any premises leased therewith; all the

branch railroad, including the premises leased, named in said mortgage, extending from the main line of said Burlington and Southwestern Railway Company at or near Unionville, in the county of Putnam, State of Missouri, by the way of Linneus and Lexington to Kansas City and by the line of the said leased premises from Lexington to Butler, in Bates county, Missouri, and to such other point in Southwestern Missouri as was determined upon by the board of directors of said company, or however said branch line of said railroad, including said leased premises; may be
134 described or built, including the right of way therefor, roadbed, superstructure, iron, ties, chains, splices, bolts, nuts, spikes, and all the lands and depot grounds, station-houses, depot-, viadu-ts, bridges, timber, and material and property purchased and to be purchased or otherwise acquired after the date of mortgage for the construction and maintenance of said railroad, and all the engines, tenders, cars, and materials and machinery, and all kinds of rolling-stock ow-ed at the date of said mortgage or thereafter purchased for or on account of said branch, and all rights and privileges and franchises relating thereto and property acquired in virtue thereof then in possession or thereafter acquired, including machine-shops, tools, implements, personal property thereon or along the line of said branch railroad, together with all the property acquired by said Burlington and Southwestern Railway Company by virtue of its lease of said Lexington, Lake and Gulf railroad, and which branch line of said leased line and premises, extending from Unionville by way of Linneus to Kansas City and Southwestern Missouri, is known and designated as "The Linneus Branch of *of* the Burlington and Southwestern Railway;" to have and to hold the same, with all the appurtenances thereunto belonging, unto said party of the second part, his heirs and assigns, forever.

135 Witness the hand and seal of said party of the first part the day and year first above written.

HARRY LACEY,
Master in Chancery.

Acknowledgment to Master's Report.

STATE OF IOWA, }
County of Scott, } *ss:*

I, Whittaker M. Grant, a notary public in and for said Scott county, in the State aforesaid, do hereby certify that Harry Lacey, master in chancery of said United States circuit court for the western district of Missouri, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged he signed, sealed, and delivered the said instrument as his free and voluntary act as such master in chancery for the uses and purposes therein set forth.

Given under my hand and seal notarial this twenty-fourth day of January, A. D. 1881.

[SEAL.] WHITTAKER M. GRANT,
Notary Public in and for Scott County, Iowa.

136 Endorsed upon said deed is the following, to wit: Master's deed. H. Lacey, master in chancery, to Elijah Smith, trustee. Filed Feb'y 26, 1881. H. C. Geisberg, clerk.

Clk U. S. D. C. Certificate as to True Copy.

UNITED STATES OF AMERICA, } *sct:*
Western District of Missouri, Eastern Division, }

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true copy of the master's deed of H. Lacey, master in chancery, to Elijah Smith, trustee, filed Feb. 26th, 1881, in case No. 297, of Farmers' Loan and Trust Company *vs.* The Burlington and Southwestern Railway Company *et al.*, as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of Jefferson, in said
137 district. this 26th day of August, A. D. 1882.

H. C. GEISBERG, *Clerk.*

Indorsements on Master's Deeds.

Endorsed upon said certificate is the following, to wit: Case No. 297. U. S. circuit court, western district of Missouri, eastern division. Farmers' Loan & Tr. Co. *vs.* B. & S. W. Co. Duly certified copy of the master's deed in the above-entitled cause. Filed Aug. 26th, 1882. H. C. Geisberg, clerk.

Certificate of Clk W. D. D. C.

UNITED STATES OF AMERICA, } *sct:*
Western District of Mo., Eastern Division, }

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true copy of the master's deed filed in my office on the 26th day of February, 1881, a copy whereof was made by me and filed Aug. 26th, 1882, case 297, Farmers' Loan & Trust Company against The Burlington & Southwestern Railway Company & others, as fully as the said copy remains on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of Jefferson, in said district, this second day of Dec., A. D. 1882.

[SEAL.] H. C. GEISBERG, *Clerk.*

Indorsed upon Certificates of Cl'k.

Endorsed upon said certificate is the following, to wit: Case No. 297. U. S. circuit court, western district of Missouri, eastern
138 division. Farmers' Loan and Trust Co. *vs.* Burlington & Southwestern R'y Co. *et al.* Duly certified copy of the master's deed in the above-entitled cause.

Said supplemental deed above mentioned is in words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Mo. } *sct:*

In the Circuit Court of the United States for the Western District of Missouri. April Term, 1882.

FARMERS' LOAN & TRUST CO.
vs.
BURLINGTON & SOUTHWESTERN R'Y CO. *et al.*

TUESDAY, *April 18th*, 1882.

This day there is received by mail and filed herein the report of Harry Lacey, master, in regard to an omission in the deed heretofore executed by said master to Elijah Smith, receiver, the supplemental deed of said Lacey, master, to said Smith, receiver, and the order of the Hon. Geo. W. McCrary, circuit judge, approving the same; and said supplemental deed is in words and figures as follows, to wit:

Master's Deed.

This supplemental indenture, made this twenty-third day of February, A. D. 1882, between Harry Lacey, master in chancery of the circuit of the United States for the western district of Missouri, party of the first part, and Elijah
139 Smith, trustee, of Boston, Massachusetts, party of the second part, witnesseth: Whereas in pursuance of a decree entered on the nineteenth day of May, A. D. 1876, by the circuit court of the United States for the western district of Missouri, in a certain case then pending therein, on the chancery side thereof, wherein the Farmers' Loan and Trust Company was complainant and The Burlington and Southwestern Railway Company and others were defendants, the said master in chancery duly advertised, according to law and the direction of said decree, the premises hereinafter described for sale at public auction, to the highest and best bidder, at Unionville, in Putnam county, Missouri, at the north door of the court-house, between the hours of ten o'clock a. m. and four o'clock p. m. on the thirtieth day of November, A. D. 1880; and whereas at the time and place so as aforesaid appointed for said sale the said master in chancery attended to make the same, and offered and exposed said premises for sale at public auction, to the highest and best bidder, and thereupon Elijah Smith, trustee, offered and bid therefor the sum of one million dollars ($1,000,000) in Linneus

Branch bonds, and that being the highest bid offered said master in chancery accordingly struck off and sold to said
140 Elijah Smith, trustee, for said sum of bonds the said premises; and whereas said premises have not been redeemed from said sale: Now, therefore, in consideration of the premises, the said party of the first part doth hereby convey unto the said party of the second part, his heirs and assigns, the said premises, which are situated in the State of Missouri and described as follows, to wit: "All the real and personal property of said Burlington and Southwestern Railway Company in said Linneus Branch railroad owned at the date of said mortgage and since acquired in any manner appertaining to said branch, and all the right, title, and equity of redemption therein, whether of said company or the stockholders thereof, in said branch, or any premises leased therewith; all the branch railroad, including the premises leased, named in said mortgage, extending from the main line of said Burlington and Southwestern Railway Company at or near Unionville, in the county of Putnam, in the State of Missouri, by the way of Linneus and Lexington to Kansas City, and the line of said leased premises from Lexington to Butler, in Bates county, Missouri, and to such other point in Southwestern Missouri as was determined upon by
141 the board of directors of said company, or however said branch line of said railroad, including said leased premises, may be described or built, including the right of way therefor, road-bed, superstructure, iron, ties, chains, splices, bolts, nuts, spikes, and all the land and depot grounds, station-houses, depots, viaducts, bridges, timber, and materials and property purchased and to be purchased and otherwise acquired after the date of the mortgage, for the construction and maintenance of said railroad, and all the engines, tenders, cars, and machinery, and all kinds of rolling-stock owned at the date of said mortgage or thereafter purchased for and on account of said branch, all the revenues and income of said branch, and all the rights and privileges and franchises relating thereto and property acquired in virtue thereof, then in possession or thereafter acquired, including machine-shops, tools, implements, personal property thereon or along the line of said branch railroad, together with all the property acquired by said Burlington and Southwestern Railway Company by virtue of its lease of said Lexington, Lake and Gulf railroad, and which branch line of said leased road and premises, extending from Unionville by way of Linneus to Kansas City and Southwestern Missouri is known and designated as the
142 Linneus Branch of the Burlington and Southwestern railway; to have and to hold the same, with all the appurtenances thereto belonging, unto said party of the second part, his heirs and assigns, forever.

Witness the hand and seal of said party of the first part the day and year first above written.

(Signed) HARRY LACEY, [NO SEAL.]
Master in Chancery.

Acknowledgment.

STATE OF IOWA, } ss:
County of Scott, }

I, Whittaker M. Grant, a notary public in and for said Scott county, in the State aforesaid, do hereby certify that Harry Lacey, master in chancery aforesaid, — United States circuit court for the western district of Missouri, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this — in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act as such master in chancery for the uses and purposes therein set forth.

Given under my hand and seal notarial this 24th day of February, A. D. 1882.

WHITAKER M. GRANT,
Notary Public in and for Scott Co., Iowa.

143 And the order of the Hon. John W. McCrary, circuit judge, is as follows, viz:

Order Approving Supplemental Deed.

In United States Circuit Court, Eastern Division of Western District of Missouri. Eq.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE BURLINGTON AND SOUTHWESTERN RAILWAY COMPANY *et al.* } No. 297.

AT CHAMBERS, *April 6th*, 1882.

This cause coming on to be heard upon the application of Harry Lacey, special master, appointed by the court in the decree of foreclosure herein to sell and make deed to the purchaser of the property therein described, to approve and deliver a supplemental deed executed to cure an omission in his original deed; and the court, being fully advised in the premises, hereby confirms and approves the said supplemental deed, and directs the clerk of this court to spread the same upon the proper records of the court, and to deliver the same, with a duly certified copy of this order, to the purchaser, Elijah Smith, trustee, or his attorney.

(Signed) GEO. W. McCRARY,
Circuit Judge.

UNITED STATES OF AMERICA, } sct:
Western District of Missouri, Eastern Division, }

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true copy of master's supplemental deed and order of court dated and filed April 18, 1882, in case 297, Farmers' Loan and

Trust Company against The Burlington and Southwestern Railway Company & others, as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of Jefferson, in said district, this second day of December, A. D. 1882.

[SEAL.] H. C. GEISBERG, *Clerk.*

Endorsed upon said certificate is the following, to wit: Case No. 297. U. S. circuit court, western district of Missouri, eastern division. Farmers' Loan & Trust Co. *vs.* Burlington & Southwestern 144 Railway Co. *et al.* Duly certified copy of the supplemental deed of master in the above entitled cause.

Plaintiff objects because the decree which was rendered requires the master in chancery to make sale and report his sale to the court for approval, and I see no recital here, and even if it were, a recital is not sufficient—the recital of the approval by the court.

HATFIELD: That is a copy from the records of the circuit court.

The def't next offers the deed in the case of John W. Brooks and others against The Burlington & Southwestern Railway Company to Elijah Smith, trustee, for the main line—deed and also supplemental deed.

Master's Deed of Main Line to E. Smith.

This indenture, made this thirteenth (13) day of December, A. D 1880, between Harry Lacey, master in chancery of the circuit court of the United States for the western district of Missouri, party of the first part, and Elijah Smith, trustee, of Boston, county of Suffolk, and State of Massachusetts, party of the second part, witnesseth:

Whereas, in pursuance of a decree entered on the nineteenth (19) day of May, A. D. 1876, by the circuit court of the United States for the western district of Missouri in a certain case then pending therein, on the chancery side thereof, wherein John W. Brooks and Alpheus Hardy were complainants and The Burlington and Southwestern Railway Company and others were defendants, the said master in chancery duly advertised according to law and the direction of said decree the premises hereinafter described for sale at public auction to the highest and best bidder, at Unionville, in Putnam county, Missouri, at the north door of the court-house, between the hours of ten (10) o'clock a. m. and four (4) o'clock p. m. on the thirteenth day of November, A. D. 1880; and whereas at 145 the time and place so as aforesaid appointed for said sale, the said master in chancery intended to make the same and offered and exposed said premises for sale at public auction, to the highest and best bidder for cash or bonds, and thereupon Elijah Smith, trustee, offered and bid therefor the sum of two hundred thousand dollars ($200,000) in main- line bonds, and that being the highest bid offered, said master in chancery accordingly struck off and sold to said Elijah Smith, trustee, for said sum of bonds the said premises; and whereas said premises have not been

redeemed from said sale: Now, therefore, in consideration of the premises, the said party of the first part doth hereby convey unto the said party of the second part, his heirs and assigns, the said premises, which are situated in the State of Missouri and described as follows, to wit: All the present and thereafter to be acquired property of the Burlington and Southwestern railway, including all the railroad then made and after the date of said mortgage to be constructed, extending from Burlington, in the State of Iowa, to the western line of the State of Missouri, at or north of St. Joseph, or however otherwise described and built, including the right of way therefor, road-bed, superstructure, iron, ties, chains, splices, bolts, nuts, spikes, and all lands and depot grounds, station-houses, depots, viaducts, bridges, timber, and material and property purchased or otherwise acquired for the construction and maintenance of the said railroad, and all the engines, tenders, cars, and machinery, and all kinds of rolling-stock now owned or to be hereafter purchased by said railway company for and to be used on said railroad, and all the revenues and income of said railway company relating thereto, and property acquired by virtue thereof, at the date of said mortgage, in possession or thereafter acquired, including machine-shops, tools, implements, and personal property and — thereon or along the line of said railroad; to have and to hold the same, with all the appurtenances thereto belonging, unto said party of the second part, his heirs and assigns, forever.

146 Witness the hand and seal of said party of the first part the day and year first above written.

HARRY LACEY,
Master in Chancery.

Acknowledgment of Master.

STATE OF IOWA, }
County of Scott, } *ss:*

I, Whitaker M. Grant, a notary public in and for Scott county, Iowa, do hereby certify that Harry Lacey, master in chancery of said United States circuit court for the western district of Missouri, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act as such master in chancery for the uses and purposes therein set forth.

Given under my hand and seal notarial this 24th day of January, A. D. 1881.

[SEAL.] WHITAKER M. GRANT,
Notary Public in and for Scott County, Iowa.

Upon said deed is the following endorsement, to wit: 296. Master's deed. Harry Lacey, master in chancery, to Elijah Smith. Filed Feb. 26, 1881. H. C. Geisberg, clerk.

Which supplemental deed above referred to is in words and figures following, to wit:

Supplemental Deed by Master in Chancery.

Master's deed.

This supplemental deed or indenture, made this twenty-third (23d) day of February, A. D. 1882, between Harry Lacey, master in chancery of the circuit court of the United States for the western district of Missouri, party of the first part, and Elijah Smith, trustee, of Boston, county of Suffolk, and State of Massachusetts, party of the second part, witnesseth: Whereas, in pursuance of a decree entered on the nineteenth (19th) day of May, A. D. 1876, by the circuit
147 court of the United States for the western district of Missouri in a certain case then pending therein, on the chancery side thereof, wherein John W. Brooks and Alpheus Hardy were complainants and the Burlington and Southwestern Railway Company and others were defendants, the said master in chancery duly advertised according to law and the direction of said decree the premises hereinafter described for sale at public auction to the highest and best bidder, at Unionville, in Putnam county, Missouri, at the north door of the court-house, between the hours of ten (10) o'clock a. m. and four (4) o'clock p. m., on the thirteenth day of November, A. D. 1880; and whereas at the time and place so as aforesaid appointed for said sale the master in chancery attended to make the same and offered and exposed said premises for sale at public auction to the highest and best bidder, for cash or bonds, and thereupon Elijah Smith, trustee, offered and bid therefor the sum of two hundred thousand dollars ($200,000) in main-line bonds, and that being the highest bid offered, said master in chancery accordingly struck off and sold to said Elijah Smith, trustee, for said sum of bonds the said premises; and whereas said premises have not been redeemed from sale:

Now, therefore, in consideration of the premises, the said party of the first part doth hereby convey unto the said party of the second part, his heirs and assigns, the said premises, which are situated in the State of Missouri, and described as follows, to wit: All the present and thereafter to be acquired property of the Burlington and Southwestern railway, including all the railroad then made and after the date of said mortgage to be constructed extending from Burlington, in the State of Iowa, to western line of the State of Missouri at or north of St. Joseph, or however otherwise described and built, including the right of way therefor, road-bed, superstructure, iron, ties, chains, splices, bolts, nuts, spikes, and all lands and depot grounds, station-houses, depots, viaducts, bridges, timbers, and
148 materials and property purchased or to be purchased or otherwise acquired for the construction and maintenance of the said railroad, and all the engines, tenders, cars, and machinery, and all kinds of rolling-stock now owned or to be hereafter purchased

by said railway Co. for and to be used on said railroad, and all the revenues and incomes of said railway company, and all the rights, privileges, and franchises of said railway company relating thereto and property acquired by virtue thereof at the date of said mortgage in possession or thereafter acquired, including machine-shops, tools, implements, and personal property, and — thereon or along the line of said railroad; to have and to hold the same, with all the appurtenances thereunto belonging, unto said party of the second part, his heirs and assigns, forever.

Witness the hand and seal of said party of the first part the day and year first above written.

(Signed) HARRY LACEY,
Master in Chancery.

Acknowledgment to Master's Sup. Deed.

STATE OF IOWA, } ss:
Scott County, }

I, Whitaker M. Grant, a notary public in and for Scott county, Iowa, do hereby certify that Harry Lacey, master in chancery of said United States circuit court for the western district of Missouri, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act as such master in chancery for the uses and purposes therein set forth.

Given under my hand and seal notarial this 24th day of February, A. D. 1882.

[SEAL.] (Signed) WHITAKER M. GRANT,
Notary Public in and for Scott Co., Iowa.

149 *Cert. of Cl'k U. S. D. C. to Master's Sup. Deed.*

UNITED STATES OF AMERICA, }
Western District of Missouri, Eastern Division, } *sct:*

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true copy of the master's deed of H. Lacey, master, to E. Smith, trustee, filed Feb. 26, 1881, and copy of supplemental master's deed of said master to E. Smith, trustee, recorded on pages 378, 379, & 380, equity record B, on the 18th day of April, 1882, in case No. 296, of J. W. Brooks *et al. vs.* B. & S. W. R'y Co. *et al.*, as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of Jefferson, in said district, this sixth day of June, A. D. 1882.

[SEAL.] H. C. GEISBERG, *Clerk.*

Endorsement on Cert. of Clerk.

Upon said certificate is endorsed the following, to wit: Case No. 296 U. S. circuit court, western district of Missouri, eastern division. John W. Brooks *et al. vs.* B. & S. W. R'y Co. Duly certified copy of the master's deed and supplemental deed in the above-entitled cause.

Upon said supplemental deed is endorsed the following, to wit: 296. Supplemental master's deed. H. Lacey, master in chancery to Elijah Smith, trustee. Recorded on pages 378, 379, & 380 of equity record "B."

Same objection as last above by plaintiff.

HUSTON: The first deed is not a deed at all. It purports to be a copy of some instrument from the clerk's office of the United States circuit court. The objection I make is that it is not an original deed and not a copy from any authorized record of a deed, but it is simply something that is copied from the report made by the master in chancery. We have no law that makes such a copy evidence.

MULLINS: I understand the point you make is that there was no order of the United States court authorizing the making of
150 the deed by the mastery in chancery on his sale to Elijah Smith, trustee, and for that reason the master in chancery could not authorize the deed.

Def't. offers the order of the United States court approving the sale, in words and figures following, to wit:

Order Approving Sale Offered by Def't.

UNITED STATES OF AMERICA, } *sct:*
Western District of Missouri, Eastern Division. }

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri. April Term, A. D. 1881.

JOHN W. BROOKS and ALPHEUS HARDY, Trustees,
vs.
THE BURLINGTON AND SOUTHWESTERN RAILWAY COMPANY and Others. } 296.

TUESDAY, *July* 5, 1881.

And now come the complainants, by their solicitors, and move the court to confirm the report of the special master appointed by this court to sell the property described in the decree of foreclosure passed herein, and for a confirmation of the sale made and reported by said master; and it appearing to the court that said report has been on file for more than one month, and that no exceptions have been filed thereto, and that said special master has proceeded in pursuance of the orders of this court, and has sold said property mentioned and described in the said decree of foreclosure, and has in due form executed a deed therefor to Elijah Smith, trustee, the

purchaser, and which deed is submitted to the court for approval, and the court being fully advised in the premises, it is ordered, adjudged, and decreed by the court that the doings of said master, as shown by said report and the sale and deed made by him of the property and rights and franchises of the Burlington & Southwestern Railway Company, be, and the same are hereby, confirmed, ratified, and approved by the court and the said deeds ordered to be delivered to said Elijah Smith, trustee, and that the property therein described be delivered to and placed in the possession of said
151 Elijah Smith, trustee; but the said deed of conveyance and the delivery of said property to said grantee shall not be taken to affect any claim, right, interest in or lien upon or to the property sold and conveyed by said master's deed now pending in this court or any State court by leave of this court, but that said claim, right, interest, or lien are hereby reserved, subject to further orders and decrees of this court, and the power to make further orders, decrees, and directions in reference to said property in this cause is hereby expressly reserved by this court

(Signed) GEO. W. McCRARY,
Circuit Judge.

Cert. of Clerk.

UNITED STATES OF AMERICA, }
Western District of Missouri, Eastern Division, } *sct:*

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for the western district of Missouri, do hereby certify that the foregoing is a true copy of the order of July 5, 1881, confirming sale, etc., in the case therein named as fully as the same remains on file and of record in said case in this office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Jefferson, in said district, this 21st day of August, A. D. 1885.

[SEAL.] H. C. GEISBERG, *Clerk.*

Upon said order is endorsed the following, to wit: No. 296. U. S. circuit court, western district of Missouri, eastern division. John W. Brooks *et al. vs.* Burlington & S. W. R'y Co. *et al.* Duly certified copy of the order of July 5, 1881, in the above-entitled cause.

HOUSTON: The master's deed that is offered under the order does not describe anything, and that is the reason they got the supplemental deed. This deed is on the main line. It does not follow the description contained in the mortgage. That deed was made in 1880. Now, the supplemental deed purports to be made in 1882, and the order approving the sale and order to deliver the deed was
152 made in 1881, and it was the old deed that was approved, if any, and not the new.

MULLINS: The approval of the circuit court is for the sale as well as the deed. He approves the sale, and the master, having made one defective deed, makes a deed making it good.

Defendant offers the deed of Elijah Smith, trustee, to the Chicago, Burlington & Kansas City railroad, in words and figures following, to wit:

Deed from Elijah Smith to C., B. & K. C. R'y Co.

Know all men by these presents that whereas I, Elijah Smith, of Boston, Massachusetts, did, on the 27th day of November, 1880, at a sale made by Wm. T. Love, a special master in chancery, appointed by the circuit court of the United States for the district of Iowa, in the case of John W. Brooks and Alpheus Hardy, trustees, against the Burlington and Southwestern Railway Co. and others, purchase all of the property, rights, and franchises of the Burlington and Southwestern Railway Company situate and being in the State of Iowa, and being all of that certain railway constructed by said company extending from Burlington, in the State of Iowa, to the State line between the States of Iowa and Missouri, with all of the property, real, personal, and mixed, belonging and appertaining to said railway;

And whereas, on the 30th day of November, 1880, I did also, at a sale made by Harry Lacy, a special master in chancery, appointed by the United States circuit court within and for the western district of Missouri, in a cause pending in said court wherein said John W. Brooks and Alpheus Hardy, trustees, were complainants and said Burlington and Southwestern Railway Company and others were defendants; and also in another cause in said court pending wherein the Farmers' Loan and Trust Company were complainants and said Railway Company and others were defendants, *and* purchase all of that certain railway constructed by said Burlington and Southwestern Railway Company extending from the State line between the States of Iowa and Missouri to Unionville, in Putnam county, Missouri, with all of the property, rights, and franchises pertaining and belonging thereto, and also all of that certain railway known as the Linneus Branch of said Burlington and Southwestern railway, extending southwardly from said Unionville through the counties of Putnam, Sullivan, and Linn, in said State, with all of the property, rights, privileges, and franchises belonging or appertaining thereto;

And whereas in the said purchase I acted as agent and trustee for the holders of the bonds of said company issued upon its main line and said branch;

And whereas, subsequent to said purchase, the Chicago, Burlington and Kansas City Railway Company, a corporation organized in due form in the State of Iowa, acquired and became the owner of all the right, title, and interest of the said parties in whose behalf I purchased in and to said railway, rights, privileges, and franchises situate and being in the State of Iowa;

And whereas subsequent to said purchase the Kansas City, St. Joseph and Burlington Railway Company, a corporation organized in due form in the State of Missouri, acquired and became the owner of all the right, title, and interest of the said parties in whose

behalf I purchased in and to the said railway, rights, privileges, and franchises situate and being in the State of Missouri;

And whereas the said two corporations have, in pursuance of the laws of the States of Iowa and Missouri, entered into articles of consolidation and have merged and consolidated their stock and franchises into one corporation, known as the Chicago, Burlington and Kansas City Railway Company:

Now, therefore, I, the said Elijah Smith, trustee, do hereby grant, sell, and convey, remise, release, and quit-claim unto the Chicago, Burlington and Kansas City Railway Company all the foregoing and above-mentioned property, to wit:

153 All of that certain railway known as the Burlington and Southwestern railway, extending from Burlington, in the State of Iowa, through the counties of Des Moines, Lee, Van Buren, Davis, and Appanoose to the State line between the States of Iowa and Missouri; and also extending from said State line to Unionville, in the county of Putnam, in the State of Missouri; and also all of that certain railway known as the Linneus Branch of said Burlington and Southwestern railway, extending on in a continuous line from said Unionville through the counties of Putnam, Sullivan, and Linn, in the State of Missouri, to Laclede on the Hannibal and St. Joseph railroad, with any and all unfinished portions thereof extending from said last-named point southwardly on the line projected by either of the corporations under which said purchase by said Smith was made, together with all the rights, privileges, franchises, and immunities belonging or appertaining thereto, and all the right of way, depot grounds, rolling-stock, and all other property, real, personal, or mixed, acquired by me by virtue of the said sales made under the said several decrees, as fully and completely as I am entitled to sell and convey the same; and it is the purpose of this conveyance to transfer and convey to said grantee all property and estate which by virtue of said sales passed to me as fully as if everything had been specifically and particularly named herein, and that the foregoing specifications of certain rights of way and other property shall not be deemed to exclude any right, franchise, immunity, or other property to which I became entitled or seized of by reason of the said purchase at the said sales made as aforesaid, under the said decrees of the said United States circuit courts, as hereinbefore named, hereby intending to relinquish to the said Chicago, Burlington and Kansas City Railway Company all property and rights I may have, hold, or be entitled to by reason of the several conveyances made to me by the said William T. Love, master under the decree in Iowa, and the said Harry Lacy, master under the decree in the western district of Missouri.

In witness whereof I have hereunto set my hand and affixed my seal this 27th day of February, A. D. 1882.

[SEAL.] ELIJAH SMITH, *Trustee.*

Acknowledgment to Deed Made by E. Smith to B. & S. W. R. R.

STATE OF IOWA, } ss:
County of Des Moines, }

Be it remembered that on this 27 day of February, A. D. 1882, before me, a notary public within and for the county and State aforesaid, appeared Elijah Smith, trustee, bachelor, who is personally known to me to be the identical person whose name is affixed to the foregoing deed of conveyance as grantor, and he acknowledged the same to be his voluntary act and deed for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and seal the day and date last above written.

W. D. EATON,
Notary Public.

Upon said deed are the following endorsements, to wit: Elijah Smith, trustee, to Chicago, Burlington & Kansas City Railway Company. Q. C. D. State of Iowa, Lee county, *ss:* Filed for record Sept. 9th, 1882, at 10 o'clock a. m., and duly recorded in book No. "M," on page 483. R. J. Smith, recorder. Fee, $1.30; paid. State of Iowa, Van Buren Co.: Filed for record Sept. 13th, 1882, at
154 1½ o'clock p. m., and recorded in book 20 of deeds, on pages 5 to 7. D. K. Kittle, recorder. $1.40. State of Iowa, Davis county. Filed for record Sept. 21st, 1882, at 2 p. m., & recorded in book No. 28 of deeds, on page 436. A. C. Lester, recorder. 64–13. 1.40. 1371. State of Missouri, county of Putnam, *ss:* Filed for record in the recorder's office November 22, 1882, at 2 o'clock p. m., and recorded in book 23 of conveyances, pages 249, 250, & 251. [Seal] Peter Greggers, recorder, by P. D. Greggers, deputy.

Def't's Testimony of Lalor.

JOHN E. LALOR, sworn on the part of the defendant, testified as follows:

Direct examination by L. T. HATFIELD, Esq.:

Q. State to the court in what capacity you were engaged in 1871, '2, '3.

A. I was chief engineer of the Burlington and Southwestern railway.

Q. State now the amount of work you did in Missouri; under what direction you did it, and where you did it—in Putnam county and both sides of it, and what years.

A. I located a line.

Q. State where you began your work and what were the circumstances following it.

A. We began surveying lines from the State line southward and southwestward with a view of establishing a line. That was in 1871 and 1872 both. We began to locate and construct in Sullivan county, near Milan, in the summer of—I would not undertake to give the dates; I made a memorandum.

Q. What did you make the memorandum from?

A. From my books; I drew these off my books, and can refer to my books.

Q. Well, proceed with the dates.

A. We commenced the survey of the line from this point about the middle of the summer of 1871, and we commenced the construction near Milan some time in September, 1871—between the 15th and the end of September.

Q. What was the amount of work, and which way did you go from there, and how much?

A. We continued from then until my connection was ended—through 1873 to January, 1874; we worked continuously on that line—between the State line and Laclede—from then until 1874.

Q. Who made the original surveys for the original location of that road?

A. They were made, under my directions, by my assistants and myself—the original surveys and final locations.

Q. Where did you run?

A. We commenced at the State line, and run down this far. We commenced at Milan, at a point where we were understood to pass a certain distance from the court-house of Milan, and we worked both ways from there, and we worked from here down, and the lines came together.

Q. How much work had you done in this State—over what territory did you work up to the time that the line was completed to Bloomfield, the main line in Iowa?

A. The track was laid to Bloomfield on the first of January, 1872, or rather the 31st of December, 1871.

Q. What was the state of the work done here at that time?

155 A. It was in the summer of 1871 that we commenced the survey and run the temporary lines in order to establish available points. We commenced the final location south of here at Milan in the latter part of the summer of 1871, in September, and commenced the work the latter part of the month of September.

Q. How soon did you get to this place with your lines from the south?

A. We got what we called our location completed that fall before winter to this place.

Q. How soon after that did you make your location from here east to Moulton?

A. We had the location through to here about the same time. There were two parties working both ways at the same time. There had been no work done when we commenced work at Milan. When we locate a line we sometimes make a small change in the line.

Q. Do you understand about there being two different lines. Where did the branch line intersect the main line?

A. I was told it would intersect about where it crossed the State line.

Q. No; in this county. Where did the Linneus branch start off

from the main line in this county? Did you understand that there was a branch line and a main line in Missouri?

A. I did.

Q. Do you know where the branch line intersected the main line in Missouri?

A. Well, it was in this neighborhood. We started what we called the Linneus branch line at Zero. It is not far from the depot here.

Q. This depot in the town of Unionville?

A. Yes, sir.

Q. How far from there would you say?

A. It cannot be far from where the depot is now; within a hundred yards.

Q. The main line ran there which way?

A. It went, as it is now built, through Cincinnati and Moulton, Iowa.

Q. Did you find any railroad when you came here to work?

A. No, sir.

Q. Did you find any construction work here at all?

A. No trace of any

Q. In regard to the Linneus branch, were you here after the iron was laid?

A. Yes, sir.

Q. Was the road built on the line located by you as it is now constructed?

A. Yes, sir.

Q. You were the chief engineer and had charge of the whole line?

A. Yes, sir.

Q. State to the court whether they were working on the line in Iowa at the same time they were working here the summer of 1871.

A. In the summer of 1871 they were working east of Bloomfield.

Q. How far is that from here, about?

A. Oh, I would not like to say.

Q. Come within ten miles of it?

A. I should say it was about 45 miles.

Q. In the meantime there was no work of construction done between Moulton and this place?

156 A. No, sir.

Q. Did you lay any track from the south in Missouri?

A. Yes, sir; we laid about between 23 and 24 miles of track from the south. We were laying track both ways at the same time.

Q. And this left a gap between here and Moulton that you afterwards located?

A. Yes, sir.

Q. About what was the amounts, comparatively speaking, in Missouri and Iowa?

A. I made comparisons on some dates; for instance, on the 1st of April I find $30,500 worth of work done on the road-bed—the 1st of April, 1872—south of Milan on the Linneus branch; nothing reported yet west of Moulton.

Q. That was at what time?

A. On the first of April, 1872; that was the spring following the time we commenced; we commenced in September, 1871.

Q. When was your next comparison?

A. The first of June, 1872, I find an estimate of $52,400 for work on the Linneus branch; and for work west of Moulton, $12,000, in Iowa; those were the totals in each of those places up to that time.

Q. The work was further advanced in Missouri than in Iowa?

A. Yes; there had been $52,000 spent on the Linneus branch and $12,000 west of Moulton.

Q. From the first of June, 1871, until you began laying track between this place and Moulton how was the proportion of expenses; where was the greatest amount of work done between the first of June, 1871, and first of June, 1872?

A. In Missouri.

Q. That means work of all kinds?

A. Yes, sir.

Q. When did it begin to assume greater proportions in Iowa than it did here in Missouri?

A. That was along about two months after that, yet *that* the expenses in Iowa were greater, comparatively, than south of here; that was partly on account of it being heavier work and partly because it was expensive to lay track from the south; it was desirable to do as much of the work from this direction as possible.

Q. Did you understand any special reason why this work was being done in Missouri at that time?

A. The reasons given to me were that it was expected as part of the understanding that the work in Missouri should be carried through whether they succeeded in Iowa or not; the extra expense of carrying iron and bridges and other material around that way had not probably been fully considered when I got these instructions; the laying of track after that came up from Sullivan county south was suspended at that time.

Q. Who had charge of work locating under you?

A. My principal assistant was Mr. Sumner; I had some other associates.

Cross-examination by Mr. HUSTON:

Q. In 1871 was the Burlington and Southwestern Railroad Company completed to any point on the State line opposite Putnam county?

A. No, sir.

Q. How far was it from there?

A. It was from here to Bloomfield.

Q. How far is Bloomfield from the State line?

A. From the point on the State line at which the line crosses it? I could not tell you without referring to my book.

157 Q. About how much?

A. About 65 miles.

COURT: From the Iowa line to Bloomfield? From Mendota to Bloomfield?

A. That is what I said—65 miles.

HUSTON: You mean by the railroad. Now, was the St. Joseph & Iowa railroad in 1871 built to the State line in Putnam county? Was it built to the State line of Putnam county in 1871?

A. No, sir; it was not.

Q. Was there any of that line built in 1871? Was there any of it built up to June, 1871? I want to know if there was any of it built up to June, 1871.

A. No, sir; there was not.

Q. I will ask you to state if there was any survey of that road made up to June, 1871?

A. Yes, sir.

Q. Now, tell us about that. I mean of the St. Jo & Iowa and not of the branch.

A. The surveys of the St. Jo & Iowa commenced in the spring of 1871.

Q. What time in the spring?

A. I could not say.

Q. Did your company commence that survey before you bought the St. Jo & Iowa out?

A. I had nothing to do with the buying.

Q. Up to June was there any survey made over that road?

A. As such there might not have been, but west of here there were surveys before June, 1871.

Q. By you?

A. Yes, sir.

Q. Where were you surveying from?

A. For a continuation of the Burlington Southwestern railroad.

Q. I am not talking about that. I want to know whether there was any survey made of the St. Joseph and Iowa line by you.

A. No, sir.

Q. Was there by any one?

A. I understand there was, but I do not know.

Q. Up to that time was there any of that road built or any work done upon it up to June, 1871, as such?

A. Not to my knowledge.

Q. Now, will you state to the court what surveys you had been planning and running through the State for your own company previous to that time and through what points?

A. Yes, sir; the first objective point contemplated by the company was a point near Brownsville. That is on the opposite side of the Missouri river, in Nebraska.

Q. When was that survey run?

A. That was never run. We were running in that direction.

Q. State if the line of that road was ever located to any point on the line of this county between the States up to June, 1871?

A. Finally established?

Q. Finally established.

A. No, sir.

Q. Had there been a final survey made over the Iowa line to Putnam county at that time, up to June, 1871?

A. No; I believe not.

Q. You talk about the main line and the branch. What do you mean by the main line?

A. I mean the direct line between the initial point of the Burlington & Southwestern railway and St. Joseph.

Q. Now, had you located the main line from where this branch intersected to St. Joe?

158 A. No, sir.

Q. It is simply an imaginary intersection; there was no railroad ever built there?

A. No, sir.

Q. And it is simply an imaginary intersection.

A. No, sir.

Q. What is it?

A. It is what you might call the proximate location. Sometimes there is several lines tried and their merits and demerits discussed. Either one may be adopted.

Q. They never have been adopted?

A. No, sir.

Q. How far were these imaginary lines extended west?

A. To two or three different points on the Missouri river.

Q. From here?

A. From here they extended west to St. Joe.

Q. Where else did they extend?

A. Down the Castile river, down towards the Grand river, and down south towards Atchison.

Q. Did you run those lines?

A. They were run under my direction.

Q. When?

A. In 1871, 1872, and 1873.

Q. You never located any main lines?

A. Yes; several portions between here and St. Joe.

Q. Were you locating it in little pieces?

A. Yes, sir.

Q. Did you ever locate any line permanently out of Unionville here on that main line, the St. Jo & Iowa?

A. Well, I located a line in this sense—I located it so far as necessary to locate it for consideration. We may have a dozen locations.

Q. Did you take any notes of them?

A. Yes, sir.

Q. How long were you engaged on that?

A. Two or three years.

Q. Did you ever locate any railroad on those different surveys?

A. What do you mean by location?

Q. Did they ever build any railroad?

A. No, sir.

Q. Did they ever locate any line on those surveys?

A. They approved of portions.

Q. What is necessary to locate the road?

A. We call the road located as soon as the engineer has located the central line of the road and as soon as the directors approve of it.

Q. Did you locate the road from there to St. Jo?

A. Not all.

Q. How would you build the road that way, making little pieces of it?

A. We start from here and select the very best route and try whether it would be better to go by Trenton or Bethany or Marysville or Albany and where the best territory would be and the cheapest line to build.

Q. Did you make several trials?

A. I did.

Q. Did you find out which was the most available way?

A. The question was for me to show the line and its cost.

Q. Was not the entire thing a sham by the company?

A. No, sir.

Q. For whom were you acting in making those surveys—for what company?

159 A. The Burlington and Southwestern Railway Company?

Q. Were you acting any for this branch road here?

A. I was chief engineer on branches under them.

Q. Were you employed by the executive committee of the branch line?

A. Directly?

Q. I do not care how.

A. Well, then, I was.

Q. Who was that executive committee?

A. You mean the Linneus branch line?

Q. Yes, sir.

A. Joseph Combs, I think, and Col. B. F. Northcott. I suppose they were Milan and Linneus men.

Q. When you got into this city you located this line south, did you?

A. Yes, sir; I came here to do that directly; I went south and located north.

Q. Where did you commence?

A. At Milan, and run both ways.

Q. How far did you run south?

A. To the connection with the Hannibal & St. Jo road, at Laclede.

Q. Did you find any line begun, road-beds thrown up there and improved?

A. Yes, sir.

Q. How did you locate the road-bed, with reference to that?

A. I located the road over those already built.

Q. Were the bridges put in?

A. No, sir. I believe there was a bridge there, but it was not built suitable for the railroad.

Q. Were not every one of those culverts put in?

A. No, sir.
Q. They had not?
A. No, sir.
Q. How much work had been done along there?
A. A good deal.
Q. How many miles of railroad dump had been thrown up there and the grade established?
A. I do not think there was a mile that was available.
Q. How much was substantially thrown up?
A. I do not know; the ground may have been disturbed for two or three miles.
Q. Don't you know it was graded from Linneus down to Laclede and from there south a distance of several miles?
A. I knew there was a good deal of useful work from Laclede down to Cunningham.
Q. How many miles?
A. Five or six.
Q. Isn't it fifteen miles?
A. I did not say it was all graded down to that point.
Q. Was it not graded from Linneus to Laclede?
A. No, sir.
Q. Was it not graded up and the high places made low and the low places made high?
A. Yes, sir. When I say "No"—I want to explain that to you; I do not mean the grade was established.
Q. By whom had the work been done—by what company?
A. I do not know as I can give name of it; it was a company that had been organized here some time, and it had in some way connected with our company; it fell into the hands of our company.
Q. Your company availed themselves of the work done there?
A. So far as it was of any use.
160 Q. They did construct it over the exact line that had been graded there south?
A. No, I think not.
Q. Where did you vary from it?
A. Oh, perhaps all along.
Q. Did you vary one inch?
A. Yes, sir; but practically we followed that line.
Q. Do you know Mr. Carnes?
A. I met him once or twice.
Q. You surveyed both ways from Milan?
A. Yes, sir.
Q. Did you find any stakes there from a previous survey?
A. No, sir; I do not think I ever did.
Q. Did you receive any books from him?
A. No, sir; never.
Q. You did not receive any books, maps, or anything he had been engaged on?
A. No, sir.

Q. Where did the company get the money that was expended here, the money that was paid out on that branch road in this State?

A. By this company?

Q. Yes, sir.

A. I had no hand in the financial department.

Q. Don't you know that they got it from subscriptions from the counties in the State of Missouri?

A. I only know by the bonds issued by these counties.

Q. How much by Sullivan county?

A. Two hundred thousand dollars.

Q. The funds paid on the branch line was paid out of the branch line funds?

A. I do not know that; I do not know anything about the funds at all.

Re-direct examination by L. T. HATFIELD:

Q. In reply to Mr. Houston's question as to the distance from Bloomfield to the State line, how many towns are there between Bloomfield and the State line? It is about 20 or 21 miles instead of 60?

A. From Bloomington to Moulton it is about 14 or 15 miles.

Q. From Moulton to Mendota is how far?

A. I cannot tell exactly; I have the books to get it from if it is material.

Q. In regard to this question as to running the lines between here and St. Jo, about how much money was expended by you in the engineer's department on surveys between here and St. Joseph; do you remember? How much time did you keep?

A. I generally had thirteen or fourteen men, averaging from $1.50 to $5 a day, and with tools and commissary and tents, etc., and we have had at times one, two, or three such parties as that in the field the whole season between here and St. Joseph.

Q. What points did you make between here and there?

A. Eagleville, Trenton, Maysville, close to Bethany, Stewartsville. These were not all continuous lines.

Q. Did these lines connect with each other?

A. They all connected. We might go to Eagleville by way of Marysville or by way of Trenton. These lines all connect, and either one of half a dozen different routes might have been adopted to get there.

Q. What was the reason the line was not built from here to St. Jo, if you know?

161 A. I suppose it was the depression of finances generally; all railroads failed more or less; many were afraid to go into such things at times. Finances of the company, I think, was the main reason of the slacking up of railroads at that time.

Q. Were not those surveys in good faith with the line south of here?

A. As far as I know they were fully in good faith, and I was urged to push them along until I was wrote to go slow—from the depression of the finances, I suppose.

Q. There was several thousand dollars spent in that way?

A. There was.

Q. Can you give any idea?

A. There must have been over $20,000 spent in that way.

Q. The work was going on there then?

A. Yes, sir.

Q. Where did the work stop first?

A. I drew off those parties first.

Q. How long afterwards did you quit work here?

A. When we finally quit altogether; it was almost the same date that I gave orders to stop laying track at Laclede, and gave orders here to stop laying track, but not to disorganize, as in a day or two I expected to go on, and that date was September 8, 1873; that was when I gave orders at both ends to quit.

Q. In regard to the construction where you spoke of having found another line begin, between what points did you find that work—between what distance?

A. I cannot tell the towns, because there are towns there now that were not there then.

Q. Was there any work done north of Linneus?

A. Not that I remember, but there was about three or four miles south.

Recross-examination by Mr. HUSTON:

Q. You were not running the line to St. Joseph when you run up to Eagleville?

A. Not necessarily to St. Joseph.

Q. Where is Eagleville?

A. I forget the county.

Q. Is it up within about three miles of the Iowa line?

A. Yes, sir.

Q. About 45 miles above St. Jo?

A. Yes, sir.

Q. Were you going to St. Jo when to Marysville?

A. Yes, sir.

Q. By what route?

A. Going west.

Q. Tell the court where a line west from there would take you.

A. It would take me northwest from Marysville to find available branches of a river which we could come down and up on the other side.

Q. What county is Marysville in?

A. I cannot recollect; it is the next county east of Buchanan county; this was Maysville.

Q. When you were running to Atchison, you were not running to St. Jo?

A. No, sir.

Q. You were simply attempting to get an outlet for your own road without regard to where you were?

A. Up to the time that I was notified that there was a combination made with the St. Jo & Iowa, that I must devote my attention to getting the best line to St. Joseph.

162 Q. When did you get that information? In what year did you run your line to Eagleville?

A. It must have been in 1872.

Q. What time of the year?

A. It was in the summer.

Q. And it was either in 1871 or 1872?

A. Yes, sir.

Q. When did you run to Atchison?

A. I never run to Atchison.

Q. Did not you state you run in that direction?

A. Yes, sir.

Q. When did you run in that direction?

A. When we struck what was called the Castile branch.

Q. When was it?

A. In 1872.

(Witness excused.)

Testimony of H. A. Sumner.

Mr. SUMNER, sworn on the part of the defendant, testifies as follows:

Direct examination by L. T. HATFIELD, Esq.:

Q. State what position you occupied in the years 1871, '2, and '3.

A. I was assistant chief engineer of the Burlington and Southwestern.

Q. State what work you did in Putnam county and how much work was done by the company and your men, where you began your work in Missouri, and where you run to from your point of beginning, and when it was.

A. We commenced about July, 1871, at Moulton and run to Unionville; at first run several lines between Moulton and Unionville; and also in the fall of 1871 we run lines between here and Laclede, Linn county.

Q. Where was the work of construction commenced in Missouri?

A. The first work that was done was near Milan.

Q. What did you do after that? Go on and state what you did from that time on.

A. I had immediate charge of the location of the road. I kept on the surveys and finally located the line between this point and Laclede first, in the fall and winter of 1871 and 1872. The next spring we were engaged on the location between Moulton and Unionville.

Q. When did you begin work in Sullivan county near Milan?

A. About the first of October, 1871, and there was work then kept on continuously during that fall and winter between this point and Laclede, such as grading and driving piles, etc.

Q. When was the work commenced from here on east to Moulton?

A. Some time in May, 1872.

Q. The work was afterwards done between the State line and Moulton?

A. After the work was done on that branch they worked at different points about the same time.

Q. In making your surveys of that line between here and Moulton did you find any line through this county—any railroad located or built by any one else?

A. No, sir.

Q. You made the original surveys yourself?

A. Yes, sir.

Q. Do you know anything about there being a main line and a branch line here in Missouri?

163 A. Our main line extended towards St. Joseph and the branch started off about where the Milan line is now, three or four hundred feet south of the depot here.

Q. Where were they in Iowa about the time you began in Milan?

A. The track was down in Davis county somewhere near Milton, east of Bloomfield.

Q. When did you begin the work of construction west of Moulton?

A. About May, 1872.

Q. Do you know when the line was surveyed west of Moulton, down this way?

A. I think I run the first line about July, 1871, that came to this point here; we put in two or three parties at that time on lines between here and Moulton.

Q. There was a large amount of grading done before the work was commenced west of Moulton?

A. Yes, sir; the grading that was done that fall and winter.

Q. About what amount of work was done in Missouri by your people before they extended west of Moulton?

A. I will have to refer to some notes.

Q. Where did you take those notes from?

A. From the official estimate in the engineer's department.

Q. Have you got the books here?

A. Yes, sir.

HATFIELD: Have you any objection, Mr. Houston?

HUSTON: No, sir: go ahead.

A. Before the first of April, 1872, there was $30,500 spent in construction of the road-bed on what we term the Linneus branch, between here and Laclede.

Q. That was by the Burlington and Southwestern company?

A. Yes, sir. I understood I was at work for the Burlington and Southwestern.

Q. How much more was done before they left Moulton, working west?

A. On or about the 11th of June, 1872, there was done $52,400 worth of work; that is the grand total of the Linneus branch.

Q. Prior to the commencing west of Moulton?

A. Up to that time there had been $12,000 worth done on the line between Moulton and Unionville; that was what was done probably in the month of May; if I recollect right the contract was let in May for the work west of Moulton.

Cross-examination of H. A. SUMNER by Mr. HUSTON:

Q. The work that was done in this State and county below here in 1871 was done for the branch?

A. Yes, sir; construction work, grading and such like.

Q. Was it not paid out of funds received from the sale of bonds issued by the counties?

A. I am unable to state.

Q. You know that there were bonds issued?

A. I know it, because I heard it.

Q. Who was the executive committee of the branch?

A. Messrs. Combs, Cave, and Northcutt.

Q. After you got to Linneus what road did you find graded south from there; how many miles?

A. Approximately 7 to Laclede.

Q. How many miles south of that?

A. Ten.

164 Q. State if you located the line of your road over that same grade and used that.

A. As near as we could; substantially.

Redirect examination of H. A. SUMNER by L. T. HATFIELD:

Q. Did you find any work of construction whatever north of Linneus?

A. No, sir.

Q. State whether or not you know the Burlington and Southwestern Company completed this road here.

A. Yes, sir; they did.

Q. And finished it up for the rolling-stock complete?

A. Yes, sir.

Witness excused.

Defendant rests.

Plaintiff's Testimony in Rebuttal.

Articles of association of North Missouri Central & of Mo. Central

Plaintiff offers in evidence the articles of association of the North Missouri Central and of the Missouri Central Railroad Companies; which said first mentioned article of association is in words and figures following, to wit:

Certificate of Secretary of State to Articles of Association of the North Mo. Central R. R. Co.

STATE OF MISSOURI, *ss*:

I, Michael K. McGrath, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and com-

plete copy of the articles of association of the North Missouri Central Railroad Company, and of the affidavit of three of the directors of said company thereto attached, filed February 10, 1868, as the same appears on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Missouri. Done at office, in the city of Jefferson, this fourteenth day of July, A. D. eighteen hundred and eighty-five.

[SEAL.] MICH'L K. McGRATH,
Secretary of State.

Articles of Association of North Mo. Central.

Article 1.

We, G. D. Burgess, A. W. Mullins, Samuel Thorn, A. D. Christy, Jno. W. Rudder, Marion Cave, & J. Seaman, of Linneus, in the county of Linn and State of Missouri, and Joseph Combs, B. 165 F. Northcott, The. McMullins, Joel H. Wilkerson, F. R. Green, & T. T. Easley, in said county and State aforesaid, and such other persons as may sign these articles of association, do by these presents associate ourselves together for the purpose of constructing, maintaining, and operating a railroad for the public use from the town of Linneus, in Linn county, Missouri, to intersect the Brunswick and Chillicothe railroad in sect. thirty-six (36), congressional township fifty-seven (57), of range twenty-two (22), ½ mile west of the range line dividing ranges twenty-one and twenty-two in said county of Linn, in the State of Missouri, to be called and known as North Missouri Central Railroad Company, the same to be constructed under said name for one hundred years from this date.

Article 2.

Said road is to be about fourteen miles in length when completed, and is to run through the county of Linn, and the capital stock of which shall be two hundred thousand dollars. The number of shares of which said capital stock is comprised shall be two thousand, each one hundred dollars subscribed representing one share of said capital stock.

Article 3.

The persons hereinbefore named in these articles of association shall act as directors of said company until the first Tuesday in March, 1868, and until their successors are duly elected and qualified.

Article 4.

We further agree to take and subscribe the number of shares of stock towards the construction of said railroad, and for the use and benefit of said company for the purpose herein expressed, set opposite our names, respectively, and bind ourselves to pay the same whenever, in the opinion of said directors or their successors in office, it may be necessary for the construction of said road.

Given under our hands, at Linneus, Missouri, on this the — day of January, A. D. 1868.

166	Names.	
G. D. Burgess, Linneus		10
A. W. Mullins, Linneus		10
D. W. Russell, Linneus		10
Sam'l Thorns, Linn Co.		20
F. G. Green, 400 acres of land		20
Thos. McMullin, 400 acres of land		20
Geo. W. Thompson		5
A. D. Christy, Linneus		5
John W. Rudder, in land		5
Marion Cave, half in land		10
G. K. Denbo, 160 acres land		8
Joseph Combs, in land		10
Geo. W. Stephens, $500 in money & 500 in land		10
T. T. Easly		5
J. Seaman, Linneus, in land		10
Milton Goldman, Linneus, in land		5
B. J. Northcott (in land)		1
J. Cundiff		1
R. J. Clark		1
G. W. Sytepleter		2
J. B. Augustus		4
John R. McEfee		1
B. F. Northcott, in land		10
G. S. Nicholy		2
D. J. Green		1
J. C. Phillips		1
H. Wancke, 40 a[cres] land, providing the road comes to Linneus		
J. P. Lambert		2
John Detroiler		2
R. E. Sidebottom, in land		5
J. H. Wilkerson, shares in land or money		10
P. B. Molley		2
B. F. Lytle		1
W. H. Garrett, 40 acres land		5
Wm. S. McClannahan, 40 acres of land		4
H. C. Bailey, in labor		1
H. W. Mayhaugh, money		1
H. C. Prewitt, money		5
" land		5

We, the undersigned directors, as hereinbefore stated in the foregoing articles of association, do hereby certify that seven hundred dollars *has* been paid into the treasury of said board of directors, the aforesaid amount of seven hundred dollars being five per cent. on fourteen thousand dollars, or one thousand dollars per mile of said road hereinbefore proposed to be built in Linn county, Missouri.

Given under our hands this 3rd day of February, A. D. 1868.

167 FLEMON R. GREEN.
JOHN W. RUDDER.
JOSEPH COMBS.

Subscribed and sworn to before me this 3rd day of February 1868.

In testimony whereof I have this day hereunto signed my name and affixed my notarial seal. Done at office, in Linneus, Linn county, Missouri.

[SEAL.] B. F. NORTHCOTT,
Notary Public.

Filed February 10th, 1868.

FRANCIS RODMAN,
Secretary of State.

Which said articles of association of the Missouri Central Railroad Company *is* in words and figures following, to wit:

STATE OF MISSOURI, *ss:*

I, Michael K. McGrath, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of the articles of association of the Missouri Central Railroad Company, and of the affidavit of three of the directors of said company thereto attached, filed January 22, 1868, as the same appears on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Missouri. Done at office, in the city of Jefferson, this fourteenth day of July, A. D. eighteen hundred and eighty-five.

[SEAL.] MICHAEL K. McGRATH,
Secretary of State.

Articles of Association of the Missouri Central Railroad Company.

We, the undersigned citizens of Linn county, in the State of Missouri, do hereby associate ourselves together for the purpose of constructing, maintaining, and operating a railroad for pub-
168 lic use in the conveyance of persons and property, and we hereby form these our articles of association.

This company shall be known by the name of the "Missouri Central Railroad Company," and shall continue for a period of ninety-nine years. Said Missouri Central railroad is to commence at Laclede, in the county of Linn and State of Missouri, at some point within the corporation of said town of Laclede, on the line of the Hannibal and St. Joseph railroad, and run thence in a southerly direction and terminate at the nearest practicable point of intersection with the Brunswick and Chillicothe railroad in the county of Chariton and State of Missouri, an estimated length of eight miles.

Said Misssouri Central railroad is to commence in the county of Linn, as aforesaid, and run into and terminate in the county of Chariton and State of Missouri.

The capital stock of this company shall be one hundred thousand dollars ($100,000), to consist of one thousand shares of one hundred dollars, $100.00, each.

The directors of this company, thirteen in number, chosen by the undersigned to hold their offices until the next annual election of the company, are as follows: I. V. Pratt, John W. Pershing, Milton Lumme, N. R. Love, Ralph Smith, James M. Welsh, John L. Reynolds, R. W. Mitchell, R. W. Holland, James A. Seaton, James T. Polson, C. A. Stone, and R. F. Felt, all residents of the town of Laclede, Linn county, State of Missouri; and we hereby agree to take the number of shares of stock in said Missouri Central Railroad Company written opposite our names and expressed in words and figures as follows and pay the amount taken upon the call of the directors of said railroad company.

Witness our hands this the 16th day of January, 1868.

Isaac V. Pratt, Laclede, (15) fifteen shares.
John F. Pershing, Laclede, (10) ten shares.
W. R. Love, Laclede, (10) ten shares.
169 Milton Lumme, Laclede, 7½ shares.
R. W. Mitchell, " 2½ shares.
John L. Reynolds, Laclede, (5) five shares.
John Polson, Laclede, Mo., (3) three shares.
James A. Seaton, Laclede, (2½) two & one-half shares.
James M. Welsh, Laclede, (1) one share.
Welsh & Slosson, Laclede, (1) one share.
John Lomex, Laclede, (1) one share.
N. Slosson, Laclede, (1) one share.
P. F. Felt, Laclede, (1½) one & one-half share.
Ralph Smith, Laclede, (3) three shares.
R. W. Holland, Laclede, (5) five shares.
C. A. Stone, (2) two shares.
E. C. Margrove, Laclede, (1) one share.
Wm. Rogers, Laclede, (2) two shares.
J. H. Welsh, Laclede, 2 shares.
Samuel Moore, Laclede, 2 shares.
James L. Polson, Laclede, 2 shares.

STATE OF MISSOURI, *County of Linn:*

Be it remembered that personally appeared before me, a notary public in and for the county and State aforesaid, Isaac V. Pratt, John F. Pershing, and John L. Reynolds, directors of the Missouri Central Railroad Company, who, upon their oath, depose and say that one thousand dollars per mile of the above-named railroad stock is subscribed in good faith and five per cent. in cash is paid in to the directors of said company in good faith, and that it is intended in good faith to construct and maintain said road mentioned in said above articles of association.

ISAAC V. PRATT,
JOHN F. PERSHING,
JOHN L. REYNOLDS.

170 Subscribed and sworn to before me this 18th day of January, 1868.

Witness my hand and notarial seal.

[SEAL.]

C. A. STONE,
Notary Public.

Filed January 22d, 1868.

FRANCIS RODMAN,
Sec'y of State.

Pl't'ff also offers in evidence the resolution of the North Missouri Central Railway Company extending its line to the Iowa line, in words and figures following, to wit:

Secretary of State as to True Copy of Resolution of N. Mo. Cent. R. R. Co.

STATE OF MISSOURI, *ss:*

I, Michael K. McGrath, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of the resolution of the board of directors of the North Missouri Central Railroad Company extending the line of said road, filed June 14th, 1869, as the same appears on file and of record, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Missouri.

Done at office, in the city of Jefferson, this seventh day of February, A. D. eighteen hundred and eighty-five.

MICH'L K. McGRATH,
Secretary of State.

Resolution of North Mo. R. R. *Central R. R. Co.*

OFFICE OF THE NORTH MISSOURI CENTRAL
RAILROAD COMPANY,
LINNEUS, Mo., *May* 20, 1869.

At a called meeting of the board of directors of this company, with Vice-President J. H. Wilkerson in the chair and H. C. Prewitt, secretary, and B. F. Northcott, G. W. Stephens, Geo. W. Thompson, Jeremiah Cundiff, A. D. Christy, James Beatty, and Joseph Combs, members present—the object of the meeting was to extend the line of this road northward to the State line—whereupon the fol-
171 lowing resolution amending the resolution of this board passed at its meeting held on the 7th day of April, 1869, was unanimously adopted:

Resolved by the board of directors of the North Missouri Central Railroad Company (more than two-thirds of the directors concurring herein), That the line of said road be, and the same is hereby, extended from its present northern terminus at the town of Linneus northward by way of Milan to Sullivan county, and Unionville, in Putnam county, to the State line in said Putnam county, in the State of Missouri, a distance of about fifty-five miles; and that the

adoption of this resolution be certified to the secretary of state according to the act of the Legislature approved March 4, 1869.

A true copy from the record of the proceedings of said board of directors.

Attest: H. C. PREWITT, *Sec.*

STATE OF MISSOURI, *County of Linn:*

We, Benjamin F. Northcott, Henry C. Prewitt, and A. W. Mullins, members of the board of directors of the North Missouri Central Railroad Company, upon oath state that more than one thousand dollars for every mile of the railroad purposed to be built, as designated in the foregoing resolution extending the line of said road, has been in good faith subscribed and more than five per cent. in cash paid thereon, and that it is intended in good faith to construct and operate the said road.

B. F. NORTHCOTT.
H. C. PREWITT.
ALEX. W. MULLINS.

Subscribed and sworn to before me, a notary public within and for said Linn county.

In witness hereof I have hereunto subscribed my name and affixed my notarial seal at office, in Linneus, this 7th day of June, 1869.

[SEAL.] B. F. NORTHCOTT,
Notary Public.

172 Filed June 14th, 1869.

FRANCIS RODMAN,
Sec'y of State.

Defendant objects for the reason that it has no relevancy to the questions to be passed upon by the court; that so far as their case shows there was nothing done under this resolution in the way of building a railroad in Putnam county on the road that is sought to be held for taxation here—not a particle of evidence that there was anything done under this extension, and the work that appears to have been done—part of the road graded—was south of the town of Linneus and part south of the town of Laclede, and nothing north of them at all, and there is nothing to follow the introduction of this resolution extending the line of the railroad. No railroad is claimed to have been built, nor anything done in the way of making this railroad, under this resolution, in Putnam county. If property were put here in Putnam county under this extension of the road, and if it were built, and if that were here now, and if that were part of the property sought to be held for State and county taxes, then this would be entirely relevant and proper; but unless some property was put here under this extension, something to be taxed, that was made and erected under this charter right, then this is wholly and entirely irrelevant and improper.

COURT: I will not pass upon this at present.

Plaintiff offers in evidence a deed of conveyance made by the North Missouri Central Railroad Company, of the first part, to the St. Joseph & Iowa Railroad Company for the use and benefit of the North Missouri Branch of the St. Joseph & Iowa railroad, dated the 31st day of May, 1871, in words and figures following, to wit:

Deed of N. Mo. Cent. to St. Jo & Iowa R. R.

In pursuance of the authority in the stockholders and the directors of the North Missouri Central Railroad Company the following deed of conveyance of the property, rights, and franchises of said company was executed and delivered to the St. Joseph and Iowa Railroad Company for the use of the Central North Missouri
173 branch thereof.

This deed of conveyance, made and entered into by and between the North Missouri Central Railroad Company, a corporation created under the general laws of the State of Missouri, and chartered on the 11th day of February, 1868, party of the first part, and the St. Joseph and Iowa Railroad Company, for the use and benefit of the Central North Missouri Branch of the St. Joseph and Iowa railroad, said St. Joseph and Iowa Railroad Company being incorporated by a special act of the Legislature of the State of Missouri, approved January 22nd, 1857, and amended by an act entitled "An act to amend an act to incorporate the St. Joseph and Iowa Railroad Company, to extend the time for the construction of said road, and to facilitate the construction of said road," approved March 19th, 1866, which said company, under the provisions of an act of the General Assembly of said State entitled "An act to aid the building of branch railroads in the State of Missouri," approved March 21st, 1868, did, by resolution of its board of directors passed on the 25th day of March, 1871, undertake to build said Central North Missouri Branch of the St. Joseph and Iowa railroad, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar paid by the said party of the second part (the receipt of which is hereby acknowledged), and of the covenants and agreements hereinafter contained, does by these presents sell, convey, assign, transfer, and deliver unto the said party of the second part the right of way and road-bed of the said North Missouri Central Railroad Company from the track of the Hannibal and St. Joseph railroad, in the town of Laclede, to the town of Linneus, in Linn county, Missouri, with all the rights, privileges, and franchises and property, real, personal, or mixed, of the said party of the first part.

And the said part of the second part hereby covenants and agrees to liquidate, pay of, and discharge the debts and liabilities of
174 the said party of the first part incurred in its corporate capacity in and about the construction of its said road.

And also to issue and deliver certificates of stock in said Central North Missouri Branch of the St. Joseph and Iowa Railroad to the stockholders in the said North Missouri Central Railroad Company, to the amount of the actual paid-up stock held in the last-named

company, upon the surrender of the old certificates (when certificates have been issued) for cancellation.

And it is further covenanted and agreed by said party of the second part that it will complete, or cause to be completed, the construction of said line of road between said towns of Laclede and Linneus, and iron, equip, and put the same in operation without delay, and as soon as the same can be done, taking into consideration the construction of the line of road of said Central North Missouri Branch Railroad to its northern terminus: And provided, That tax-payers shall be entitled to receive certificates of stock in said branch railroad on account of the payment of taxes for the same amounts they would have been entitled to in the said North Missouri Central Railroad Company; to have and to hold the property hereby conveyed, together with all the rights, privileges, and franchises aforesaid, unto the said party of the second party and its assigns forever.

In witness whereof I, Benjamin F. Northcott, president of said North Missouri Central Railroad Company, for and in behalf of said company, have hereto set my hand, with the corporate seal of said company hereto affixed, this 31st day of May, 1871.

[SEAL.] (Signed) THE NORTH MISSOURI CENTRAL RAILROAD COMPANY,
By B. F. NORTHCOTT,
President North Missouri Central Railroad Co.
(Signed) MARION CAVE,
Sec. N. M. C. R. R. Co.

175 *Acknowledgment to Deed.*

STATE OF MISSOURI, } ss:
County of Linn, }

Be it remembered that on the 31st day of May, 1871, before the undersigned, a notary public within and for the county of Linn and State of Missouri, personally came B. F. Northcott, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged that he executed the same for the uses and purposes therein mentioned.

In testimony whereof I have hereto set my hand and affixed my official seal at my office, in Linneus, Linn county, Missouri, the day and year first above written.

[SEAL.] (Signed) A. D. CHRISTY,
Notary Public.

Plaintiff also offers a deed of conveyance made by the Missouri Central Railroad Company for the use and benefit of the Central North Missouri Branch of the St. Joseph & Iowa Railroad Company conveying all their rights and property and franchises, dated the 31st day of May, 1871, in words and figures following, to wit:

Deed of Central North Mo. Branch to St. Joe & Iowa R. R.

In pursuance of the power of the stockholders and the authority in the board of directors of the Missouri Central Railroad Company the following deed of conveyance of the property, rights, and franchises of said company was *extended* and delivered to the St. Joseph and Iowa Railroad Company for the uses of the Central North Missouri Branch thereof:

This deed of conveyance, made and entered into by and between the Missouri Central Railroad Company, a corporation created under the general laws of the State of Missouri and chartered on the 22d day of January, 1868, party of the first part, and the St. Joseph and Iowa Railroad Company, for the use and benefit of the Central North Missouri Branch of the St. Joseph and Iowa Railroad Company (said St. Joseph and Iowa Railroad Company being incorporated by a special act of the General Assemby of the State of Missouri
176 approved January 22d, 1857, and amended by an act entitled "An act to amend an act entitled an act to incorporate the St. Joseph and Iowa Railroad Company, to extend the time for the construction of said road, and to facilitate the construction of the same," approved March 19th, 1866, which said company, under the provisions of an act of the General Assembly of the State of Missouri, entitled "An act to aid the building of branch railroads in the State of Missouri," approved March 21st, 1868, did, by resolution of its board of directors passed on the 25th day of March, 1871, undertake to build said Central North Missouri Branch of the St. Joseph and Iowa railroad), party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar paid by said party of the second part (the receipt of which is hereby acknowledged), and of the covenants and agreements hereinafter contained, does by these presents sell, convey, assign, transfer, and deliver unto the said party of the second part the right of way and road-bed of the said Missouri Central Railroad Company from the track of the Hannibal and St. Joseph railroad, in the town of Laclede, in Linn county, to Stanley City, in Chariton county, Missouri, where said Missouri Central railroad intersects with the Chillicothe and Brunswick railroad, with all the rights, privileges, and franchises and property, real, personal, and mixed, of the said party of the first part, excepting, however, from this conveyance and transfer all the unpaid subscription to the capital stock of the said Missouri Central Railroad Company due or owing by individuals who are hereby released and discharged therefrom; and the said party of the second part covenants and agrees to liquidate, pay off, and discharge the debts and liabilities of said party of the first part incurred in its corporate capacity in and about the construction of its said road, and also to issue and
177 deliver certificates of stock in said Central North Missouri Branch of the St. Joseph and Iowa Railroad Company to the amount of the actually paid-up stock held in the last-named company, upon the surrender of the old certificates (when certificates have been issued) for cancellation.

And it is further covenanted and agreed by said party of the second part that it will complete or cause to be completed the construction of the said line of road between said town of Laclede and Stanley City, and iron, equip, and put in operation without delay and as soon as the same can be done, taking into consideration the construction of the line of road of said "Central North Missouri Branch" railroad to its northern terminus;

And provided that tax-payers shall be entitled to receive certificates of stock in said branch railroad on account of the payment of taxes for the same amounts they would have been entitled to in the said "Missouri Central Railroad Company;"

To have and to hold the property hereby conveyed, together with all the rights, privileges, and franchises aforesaid, unto the said party of the second part and its assigns, forever.

In witness whereof I, Isaac V. Pratt, president of said Missouri Central Railroad Company, for and in behalf of said company, have hereunto set my hand and affixed my private seal (no seal for said company having been provided) this 31st day of May, 1871.

[SEAL.] (Signed) ISAAC V. PRATT,
President of the Missouri Central Railroad Company.

STATE OF MISSOURI, }
County of Linn, } ss:

Be it remembered that Isaac V. Pratt, who is personally known to the undersigned, a notary public within and for the said county of Linn, to be the person whose name is subscribed to the foregoing instrument as a party thereto, this day appeared before me and acknowledged that he executed the same as president of the
178 Missouri Central Railroad Company and as the act and deed of said company for the uses and purposes therein contained.

Witness my hand, with my notarial seal affixed.

Done at office in Laclede, Missouri, this 21st day of May, 1871.

(Signed) R. W. MITCHELL,
Notary Public.

Christy's Testimony on Behalf of Plaintiff.

Mr. CHRISTY, sworn on the part of the plaintiff, testified as follows:

Direct examination by Mr. HOUSTON:

Q. Are you acquainted with Benton township, in Linn county?
A. Somewhat.
Q. Where is it situated with reference to Linneus?
A. North.
Q. How far north to the south line of that township?
A. I do not know exactly whether I know where that line is or not. I believe, though, if I am not mistaken, it runs along where Silas Hale now lives, but I do not remember the sections. I guess it is about four miles.

Q. A railroad running into the town of Linneus would not come any nearer than three miles of it?

A. Coming from the south, you mean?

Q. Yes, sir.

A. No, sir; not any nearer than three miles, I am sure.

Witness excused.

Plaintiff offers an order of the county court of Linn county making a subscription to the Missouri Central Railroad Company of $40,000 in behalf of Jefferson township, in said Linn county.

Defendant objects—this is subscribing $30,000 for the benefit of building the Missouri Central railroad, and that is the railroad running southward.

Def't objects to it as being incompetent for any purposes and wholly immaterial in respect to this controversy.

COURT: Consider it in, subject to their objection.

179 Said order above referred to is in words and figures following, to wit:

Certified Copy of Order.

STATE OF MISSOURI, } ss:
County of Linn, }

August Term, 1868.

In the county court of said county, on the 3rd day of August, 1868, the following, among other proceedings, were had, viz:

Whereas it appears to the county court that at a township election had by the voters of Jefferson township on the 15th day of June, 1868, not less than two-thirds of the qualified voters of said township voting at said election voted that a subscription of thirty thousand — should be made by said township to the capital stock of the Missouri Central Railroad Company, & that bonds be issued for that sum to run for the period of 20 years, bearing interest at the rate of ten per cent. per annum, payable yearly, & one-tenth part of the principal to become due & payable 11 years after the issue thereof, & one-tenth to become due & payable each year thereafter till the whole amount of the principal & interest shall be paid: It is, therefore, ordered by the court that said township subscribe, & that the court do hereby subscribe in behalf of said township, the said sum of thirty thousand dollars according to the terms & conditions aforesaid.

C. Boardman, justice, dissenting.

STATE OF MISSOURI, } ss:
County of Linn, }

I, Geo. W. Adams, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Linneus, this 3rd day of July, 1885.

[SEAL.] GEO. W. ADAMS,
Clerk County Court.

180 Plaintiff offers a similar order making a subscription to the North Missouri Central of $40,000 on behalf of Locust Creek township, in same county, which said order is in words and figures following, to wit:

Order Subscribing $40,000 *to North Mo. Central.*

County Court. August Term, 1868.

Certified copy of order.

STATE OF MISSOURI, } ss:
County of Linn, }

In the county court of said county on the 4th day of August, 1868, the following, among other, proceedings were had, viz:

Whereas it appears to the court that at a township election had by the voters of Locust Creek township on the 30th day of May, 1868, not less than two-thirds of the qualified voters of said township voting at said election voted that a subscription of forty thousand dollars should be made by said township to the capital stock of the North Mo. Central R. R. Co.; that bonds be issued for that sum to run for the period of 20 years, bearing interest at the rate of ten per cent. per annum, payable yearly, and one-tenth part of the principal to become due and payable 11 years after the issue thereof, and one-tenth to become due and payable each year thereafter till the whole amount of the principal and interest is paid: It is, therefore, ordered by the court that said township subscribe, and that the court does hereby subscribe in behalf of said township, the said sum of forty thousand —, according to the terms and conditions aforesaid.

Clerk Co. Court's Cert. as to Copy of Order.

STATE OF MISSOURI, } ss:
County of Linn, }

I, Geo. W. Adams, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written as the same appears of record in my office. In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Linneus, this the 3rd day of July, 1885.

[SEAL] GEO. W. ADAMS,
Clerk County Court.

181 Also an order of the county court making a subscription to the North Missouri Central Railway Co. of $20,000 on behalf of Benton township, and which said order is in words and figures following, to wit:

Order of County Court. N. Mo. Cent. R'y Co. on Behalf of Benton T'w'p.

May Adjourned Term, 1869.

Certified copy of order.

STATE OF MISSOURI, } ss:
County of Linn, }

In the county court of said county on the 5th day of July, 1869, the following, among other, proceedings were had, viz: Ordered, That it appearing to the court that at a township election held by the voters of Benton township on the 26th day of June, 1869, not less than two-thirds of the qualified voters of said township voting at said election voted that a subscription of twenty thousand dollars should be made by said township to the capital stock of the North Missouri Central Railroad Company, & that bonds be issued for the same to run for twenty years, bearing interest at the rate of ten per cent. per annum, payable yearly, & one-tenth part of the principal to become due & payable eleven years after the issue thereof and one-tenth to become due and payable each year thereafter till the whole amount of principal and interest are fully paid: It is, therefore, ordered by the court that said township subscription be subscribed by the court in behalf of said township — the sum of $20,000, according to the terms & conditions aforesaid.

Certificate of Clerk of County Court.

STATE OF MISSOURI, } ss:
County of Linn, }

I, Geo. W. Adams, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Linneus, this the 3rd day of July, 1885.

[SEAL.] GEO. W. ADAMS,
Clerk County Court.

182 *Defendant's Objection.*

Defendant makes the same objection to these papers as last above.

Plaintiff reads in evidence the deposition of Alexander Cairns, which deposition is in words and figures following, to wit:

Testimony of Alexander Cairns.

ALEXANDER CAIRNS, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and says:

My name is Alexander Cairns; I reside in Cowley county, State of Kansas; my age is 54 years; I formerly resided in Linn county, Missouri; resided there from the year 1868 to 1879; during that time I was engaged in the business of civil engineer. I was employed by the North Missouri Central Railroad Company during the spring of 1869. I surveyed a line of road from Linneus, Linn county, Missouri, in a southwesterly direction to Stanley City, Chariton county, Missouri; also a line north from Linneus through Sullivan county to Unionville, in Putnam county, Missouri, completing a preliminary survey for said North Missouri Central Railroad Company. Again, in 1871, I was employed by an executive committee consisting of Joseph Coombs, Marion Cave, and B. F. Northcott to locate said line of railroad on or near previous preliminary survey, and in pursuance of such employment I did locate said road from Linneus to Unionville. My impression then was that said executive committee were appointed by and acting under instruction received from the North Missouri Central Railroad Company. From a late perusal of the records of said company I find I was mistaken, and that said executive committee were acting under instructions received from the St. Joseph and Iowa Railroad Company. As near as I can now remember there was expended about the sum of fifty thousand dollars in surveying, locating, and constructing said line of railroad from the town of Linneus to the town of Laclede and about the sum of $4,000 in making surveys and locating the line of said railroad from said town of Linneus to or near the town of Unionville, in Putnam county. This amount of $4,000 was
183 paid by said executive committee and the $50,000 was paid by the North Missouri Central Railroad Company. At that time I supposed that said company was paying the $4,000; also I delivered the profiles made by me of said line of road and memoranda of the survey & location thereof to the engineer of the Burlington and Southwestern Railway Company by direction of said executive committee.

Cross-examination of ALEX. CAIRNS:

The work on which I expended the $4,000 was done after the 1st day of July, 1871. The surveys made in 1869 were merely trial lines and no location was made. I turned [over] the plats and memoranda of survey made in 1871 to Mr. Lalor, chief engineer of the Burlington & Southwestern Railroad Company. All the work of construction north of Linneus as far as Unionville was done under the direction of Mr. Lalor, as chief engineer of the Burlington & Southwestern Railroad Company. The North Missouri Central Railroad

Company never constructed any railroad north of Linneus. I know nothing about who did the work between Unionville and the Iowa State line. H. A. Sumner, an assistant engineer of the Burlington & Southwestern Railway Company, appeared to have charge of the construction between Linneus and Unionville.

Testimony of Joseph Combs.

Mr. JOSEPH COMBS, sworn on the part of the plaintiff, testified as follows:

Direct examination by Mr. HOUSTON:

Q. Who were the directors of the Central North Missouri railroad, the road running from Linneus to Laclede, at the time that this branch was projected in March, 1871?

A. I think Mullins Northcott, and I think Mr. Pruett.

Q. Was not Mr. Northcott president of the road?

A. I do not know that he was then. They had several presidents.

Q. What amount of money was received by the company there and expended south of Linneus, between Linneus and Laclede?

184 A. Really I do not know [for] certain; we spent some twenty or thirty thousand dollars.

Q. Do you know the amount that was spent south of Laclede?

A. Not certain; the people south of Laclede had $30,000; I do not know just how much money; the bonds were sold at a discount.

Q. Did not you pay Cairns for making the survey to the Iowa line in 1871?

A. Yes, sir; that was the executive committee.

Q. Was not the funds paid there funds you had received on behalf of the old company?

I think it was.

Cross-examination by L. T. HATFIELD, Esq.:

Q. You speak about the executive committee. You mean the executive committee of the branch of the St. Joseph & Iowa?

A. Yes, sir.

Q. About how much money did Mr. Cairns' work amount to there—approximately?

A. I suppose a couple of thousand dollars; maybe twenty-five hundred dollars.

Q. What was that work comprised of?

A. As I understand it, it was a sort of preliminary survey.

Q. At whose interest?

A. St. Joseph & Iowa.

Q. In accordance with your agreement made with the Burlington & Southwestern?

A. Yes, sir; we spent all the funds we had in keeping up a preliminary survey until such time as we could get to work there.

Q. You think there was twenty or twenty-five hundred dollars?

A. Yes, sir.

Redirect examination by Mr. HOUSTON:

Q. That was funds of the Central North Missouri road?
A. Yes, sir.

Witness excused.

185 Testimony closed at 5.40 p. m. August 20th, 1885.

Plaintiff Withdraws Objection Except as to its Effect. Plaintiff Submits Case on its Merits.

AUGUST 21ST, 1885.

Court heard argument of plaintiff and defendant upon the law and evidence in the case, in the course of which argument S. P. Huston, attorney for plaintiff, in express terms, withdrew all exceptions and objections to the testimony offered by the defendant in this behalf, except as to its legal effect, and submitted the case upon its merits, waiving all objections made during the trial as to the admissibility of testimony offered by defendant; whereupon the defendant asked the court to declare the law as follows:

Defendant's Instructions.

Aug. Term, 1885.

In the Matter of the STATE OF MISSOURI, *ex rel.* John F. Guffey, Collector of Putnam County, Mo.,

against

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD CO.

The defendants, by attorneys, moved the court to declare the law as follows:

1. The charter of the St. Joseph and Iowa Railroad Company, read in evidence, exempts the capital stock of said company from the payment of all State and county taxes. If, therefore, the court finds from the evidence that the defendant company has succeeded to the corporate rights, privileges, and franchises of the said St. Joseph and Iowa railroad, running through Putnam county, then the taxes levied by the county court of said county against the defendant for State and county purposes for the year sued for were levied without authority of law and contrary to the said charter exemption, and the finding and judgment must be for defendant, provided the court further finds from the evidence and the pleadings and the admissions of plaintiff that all other taxes sued for and levied for the years 1882 and 1883 have been paid. Given.

2. The court further declares the law to be that by and under the charters and the conveyances and assignments and transfers read in evidence by the defendants the rights, privileges, and immunities conferred by the charter of the St. Joseph and Iowa Railroad Company have been vested in the defendant company as to its line of railroad through said Putnam county, and that under said charter

and the rights, privileges, and immunities thereby conferred, and to which the defendant has succeeded, the defendant is exempt from the payment of State and county taxes in said county. Refused.

The plaintiff asks no declaration of law; whereupon the court took the case under advisement until Saturday morning, Aug. 22nd, 1885. Then the court gave declaration of law No. 1, and refused declaration No. 2; to which action of the court in refusing said declaration No. 2 defendant then and there at the time excepted, and herein saves his exception; and thereupon the court ren-
186 dered its decision in a finding and verdict in favor of plaintiff in accordance with the petition in this cause; thereupon and on the same day defendant filed motion to set aside the verdict and finding and for a new trial, which said motion is in words and figures as follows:

Motion for a New Trial.

In the Circuit Court of Putnam County, Missouri. August Term, 1885.

STATE OF MISSOURI, *ex rel.* John F. Guffey, Collector Putnam County, Missouri,

against

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY CO.

Now, at this day comes the defendant, by attorney, and moves the court to set aside the verdict in the above-entitled cause and grant a new trial for the following reasons:

First. Because the finding is against the law and the weight of evidence.

Second. Because the finding and verdict *is* contrary to the law declared by the court.

Third. Because the court refused proper and legal instructions on the part of the defendant.

Fourth. Because the court refused the admission of proper and legal evidence on the part of defendent, as follows: Refused the admission of the contract between the St. Joseph and Iowa Railroad Company and the Burlington and Southwestern Railway Company, dated May 23d, 1871. Because the court refused admission of the amended articles of incorporation of the Burlington and Southwestern Railway Company, dated July 12th, 1871. Because the court refused admission of the mortgage of the Linneus Branch of the Burlington and Southwestern Railway Company to the Farmers' Loan and Trust Company. Because it refused admission of the mortgage of the main line to John W. Brooks and Alpheus Hardy. Because it refused admission of the decree of foreclosure of mortgage on Linneus branch and the main line. Because it refused admission of the master's deed and supplemental deed of Linneus branch and main line by Harry Lacey, special master, to Elijah Smith, trustee. Because it refused admission of deed from Elijah Smith, trustee, to the Chicago, Burlington and Kansas City Railway Company.

Fifth. Because the court admitted illegal and improper evidence on the part of plaintiff and against the objection of defendant, as follows: In admitting evidence of the organization of the North Missouri Central Railroad Company, the extension thereof to Unionville, and the subscription of stock thereto, and the deeds conveying the same to the St. Joseph and Iowa Railroad Company, for the use of the Central North Missouri branch thereof.

187 Sixth. Because the court gave illegal and improper instructions on the part of plaintiff against the objection of defendant.

J. H. CARROLL,
A. W. MULLINS, AND
L. T. HATFIELD,
Att'ys for Def'ts.

Endorsed upon said motion is the following, to wit: Guffey, Coll., *vs.* C., B. & K. C. R'y Co. Motion for new trial. Filed August 21st, 1885. Peter Greggers, clerk.

Motion for New Trial Overruled and Excepted to.

And which said motion was by agreement taken up and argued, and being by the court fully understood, was by the court, overruled; to which action of the court in overruling said motion for a new trial defendant then and there at the time excepted and herein saves his exceptions.

And thereafter, upon the same day, defendant filed his motion in arrest of judgment, in words and figures following:

Motion in Arrest of Judgment.

Circuit Court of Putnam County, Missouri. August Term, 1885.

STATE OF MISSOURI *ex rel.* John F. Guffey, Collector Putnam County, Missouri,

against

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY COMPANY.

Now comes the defendant, by attorney, and moves the court to arrest the judgment in this cause for the following reasons:

First. Because the petition does not state facts sufficient to authorize a recovery, in this, that it does not state by whom the taxes sued for were levied nor to whom the same were payable, and does not show that the property described constituted the corporate property of said defendant used as a railroad.

Second. Because the reply of plaintiff does not respond to the answer of defendant, in that it does not state facts sufficient to authorize the admission of evidence attacking the sufficiency of the title of defendant to the railroad in controversy.

188 Third. That upon the record the judgment is erroneous and for the wrong party.

J. H. CARROLL,
A. W. MULLINS, AND
L. T. HATFIELD,
For Def't.

Endorsed upon said motion is the following, to wit: State *ex rel.* Guffey *vs.* C., B. & K. C. R'y Co. Motion in arrest —. Filed August 21st, 1885. Peter Greggers, clerk.

Motion in Arrest of Judgment Overruled.

And by agreement of parties said motion was by the court taken up, and being argued and by the court fully understood, was by the court overruled; to which action of the court in overruling said motion defendant then and there and at the time excepted and herein saves his exception.

And thereafter, on the same day, comes the defendant and files its affidavit and bond praying for an appeal from the judgment of this court to the supreme court of the State of Missouri, which were duly filed and the bond approved and the appeal granted.

And thereupon defendant asked and obtained thirty days in which to prepare and file its bill of exceptions.

Sept'er 21st, 1885.

ANDREW ELLISON,
Judge 27th Circuit.

Approved as corrected.
Sept. 14th, 1885.

S. P. HUSTON,
Att'y for Plaintiff.

Approved.

L. T. HATFIELD.

STATE OF MISSOURI, }
County of Putnam, } *ss:*

I, Peter Greggers, clerk of the circuit within and for the county and State aforesaid, hereby certify that the above and foregoing writing is a true and complete transcript of the record and proceedings had in the case therein stated, as fully as the same appears and remains of record and on file in this office.

In witness whereof I have hereunto set my hand and affixed the seal of said court. Done at office, in Unionville, in the county aforesaid, on this 3 day of December, A. D. 1885.

[SEAL.] PETER GREGGERS, *Clerk.*

189 And afterwards, to wit, at the October term, 1885, and on January 5th, 1886, the following further proceedings were had in said cause, to wit:

Proceedings in the Supreme Court of the State of Missouri.

STATE *ex rel.* John F. Guffey, Respondent,
vs.
C., B. & K. C. R'y Co., Appellant.

Appeal from Putnam Co. cir. c't.

Comes now the said appellant, by attorney, and filed its motion to advance this cause on the docket, which said motion is in words and figures following, to wit:

In the Supreme Court of Missouri. October Term, 1885.

THE STATE OF MISSOURI *at* the Relation of John F. Guffey, Collector of the Revenue of Putnam County, Missouri, Plaintiff, Respondent,
against
THE CHICAGO, BURLINGTON & KANSAS CITY RAILWAY COMPANY, Defendant, Appellant.

Now comes the appellant in the above-entitled cause and states that the said action is a suit to recover from the said appellant State and county taxes assessed against its railway and corporate property in Putnam county, Missouri; that from a judgment therein rendered for such taxes, in favor of respondent and against the appellant, it has taken an appeal to the supreme court of this State; that the transcript in said cause has but recently been filed in such court; that the issues involved in said cause are of great magnitude, to wit, the question of the exemption of such railway company from the payment of State and county taxes in perpetuity; that the position of such cause upon the docket of this court, in the regular order of business, will defer action for two or more years; that the questions involved affect the interest of appellant, respondent, and the
190 State of Missouri, and to the end that such questions may be speedily disposed of, and the matter of appellant's liability and respondent's revenue be adjusted, this court is asked to advance said cause on the docket to the earliest day possible, having reference to the interest involved and time for preparation for argument thereon.

L. T. HATFIELD,
Attorney of Appellant.

On the back of said motion appear the following endorsements, to wit: John F. Guffey, collector Putnam Co., Mo., resp't, vs. The Chicago, Burlington & Kansas City R'y Co., app'l't. Motion to advance cause. Filed Jan. 5, 1886. Henry W. Ewing, clerk. L. T. Hatfield, att'y for appellant. *Per curiam.* Motion sustained and to be heard at the April term, 1886.

And afterwards, to wit, at the same term, and on January 26th, 1886, the following further proceedings were had in said cause, to wit:

Appeal from Putnam Co. Cir. C't.

STATE *ex rel.* John F. Guffey, Collector, &c., Respondent,

vs.

THE C., B. & K. C. R'Y Co., App.

Now, at this day, the court, having fully considered and understood the motion heretofore filed to advance this cause on the docket, doth order that said motion be sustained, this cause advanced on the docket, and set for hearing the next term of this court.

At the April term, 1886, and on the 21st day of said month and year, the following assignment of errors was filed in said cause, to wit:

191 *Assignment of Errors.*

In Supreme Court of the State of Missouri. April Term, 1886.

STATE *ex rel.* Guffey, Resp't, *v.* C., B. & K. C. R'Y Co., App.

And now comes the said appellant and says that in the record and proceedings of the court below in the above-entitled cause there is manifest error, and for error said appellant assigns the following, to wit:

1. That said court admitted improper and illegal testimony offered by respondent.
2. That said court rejected proper and legal testimony offered by appellant.
3. That the court refused to give the jury proper and legal instructions offered by appellant.
4. That the verdict was against the evidence.
5. That the verdict was against law.
6. That the verdict was against both law and evidence and against the law under the evidence.
7. That the verdict was against the weight of evidence.
8. That the judgment was rendered in favor of the respondent when it should have been rendered for the appellant.
9. That said court overruled the motion for a new trial made by appellant.

L. T. HATFIELD,
Att'y for App't.

And now comes the respondent and, for joinder in error, says there is no error in the record and proceedings of said circuit court in said cause, as assigned by said appellant.

S. P. HUSTON,
B. G. BOONE,
Att'ys for Resp't.

192 And afterwards, to wit, at the same term and on the 21st day of April, 1886, the following further proceedings were had in said cause, to wit:

Appeal from Putnam County Circuit Court.

STATE *ex rel.* John F. Guffey, Collector, &c., Resp.,

vs.

C., B. & K. C. R'y Co., App.

Come now the parties, by [their] attorneys, and, after argument herein, submit these causes to the court.

And afterwards, to wit, at the said term, and on the 17th day of May, 1886, the following further proceedings were had in said cause, to wit:

THE STATE OF MISSOURI *at* the Relation and to the Use of John F. Guffey, Collector of the Revenue of Putnam County, in the State of Missouri, Respondent,

vs.

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILROAD COMPANY, Appellant.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Putnam county circuit court rendered be in all things affirmed and stand in full force and effect. And it is further considered and adjudged by the court that the said respondent recover against the said appellant his costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion is in the words and figures following, to wit:

193 *Opinion of the Court.*

In the Supreme Court of Missouri. April Term, 1886.

STATE *ex rel.* Crumpacker, P. E.,

vs.

C., B. & K. C. R. R. Co., D. E.,

and

STATE *ex rel.* Guffey, Resp.,

vs.

C., B. & K. C. R. R. Co., App.

These suits were argued at the same time, present the same questions, and will be considered together. The plaintiffs are collectors of the revenues, one of Sullivan and the other of Putnam county.

They seek to recover delinquent taxes for 1881 & '2. The defendant claims to be the successor of the charter rights of the St. Joseph and Iowa Railroad Company and by reason thereof exempt from the payment of the taxes in suit.

The St. Joseph and Iowa Co. was created by the act of Jan. 22, 1857. This charter was amended by the acts of Nov. 5, 1857, and March 19, 1866.

The third section of the first-named act provides that the company shall be subject to the same restrictions and entitled to all the rights, privileges, and immunities which were granted to the H. & St. J. R. R. Co. by the act of Feb. 16, 1847, and two designated amendatory acts. The charter of that company contains a like reference to the act creating the Louisiana and Columbia R. R. Co., approved on Jan. 27, 1837.

By these various acts the directors of the St. Joseph and Iowa Co. were authorized to construct a railroad from St. Joseph to some point on the Iowa line so as to connect there with any railroad in this or that State; "to make * * * branches along said road or at the termination thereof, as they may deem necessary," and it is also declared: "Every person who shall cease to be a stockholder shall cease to be a member of said company, and the stock of said company shall be exempt from State and county taxes."

194 On the 25th of March, 1871, the directors passed a resolution asserting their desire to avail themselves of the act entitled "An act to aid the building of branch railroads in the State of Missouri," approved March 21, 1868, the branch to be known as the Central North Missouri Branch, and to be built from a point on the main line near Unionville, through Putnam, Sullivan, and Linn counties and the town of Linneus. Sullivan and Putnam counties subscribed to the stock of the road for the use of the branch. At the request of the agents of those counties, they being the only stockholders, an executive committee for the branch was appointed with power to survey, etc.

Thereafter, and on May 23, 1871, the board of directors of the St. Joseph and Iowa Co. by their deed and contract sold and conveyed the main line and all of the property of the company, including "all the rights, privileges, franchises, powers, and authority owned or held" by said company, to the Burlington and Southwestern Railway Co., a corporation created under the laws of the State of Iowa. Afterwards, and in 1872, the directors of the Burlington Co., acting by the direction of the stockholders of the branch road, then called the Linneus branch, placed upon the branch road a mortgage to secure certain bonds. The main line had been previously mortgaged. The defendant purchased the branch road through a foreclosure sale had upon the mortgage thereon. The taxes in suit were assessed upon this branch road property.

I. The exemption of the stock of the St. Joseph and Iowa Company, it may be conceded, was also an exemption of the property represented by it. As between the State, the company, and the stockholders, it is assumed for all the purposes of this case that the property of the company, including any branch road built solely

under authority of the charter, would be exempt from State and county taxes.

The further question then arises, Is the property of the
195 branch avowedly built under the branch act of 1868 also exempt?

The power of the Legislature to forever place property out of and beyond the reach of taxation upon no other consideration than that which may be presumed to accrue to the public by the building of a railroad is so far reaching in its logical consequences that the exemption should be confined to the clear and strict terms of the law.

The abandonment of the right of taxation cannot be presumed and must appear in clear and unequivocal terms. Pacific R. R. *v.* Cass county, 53 Mo., 17, & cas. cited.

The constitution of 1865 deprived the General Assembly of all power to thereafter exempt this class of property. (Art. II, sect. 16.)

The branch railroad act of 1863 makes no such effort. If this property is free from taxation it is because of the charter privileges of the St. Joseph and Iowa Company. The charter has in view main and branch lines which are parts of one entire piece of property, with one management and one set of stockholders. The branch act, it is true, applies only to such roads as have power to build branches, but by the act the stock subscriptions are to be made in aid of the branch, and the certificates must so state. The cost and expenses of construction and operation of that and the main line are to be kept separate. Neither can participate in the profits of the other. Neither can be held for the debts of the other. The branch stockholders have nothing whatever to do with the main line. They determine all matters specially affecting the branch, and the directors must be guided by their instructions. They may participate in the choice of officers only. Here we have a branch road by name, and while it had no separate corporate existence, yet for nearly all practical purposes it is a separate organization.

It cannot be that stock and property of that character and with these attributes was ever contemplated by the Legislature when it said the stock of the St. Joseph and Iowa Company should be exempt from State and county taxes. Such exemption ought not to be extended or permitted to go further than the express terms of the law and the clear intention of the parties to the contract. Had the
branch never been divorced from the main line, still projected
196 as it was under this act of 1868, the property ought to be held subject to taxation even in the hands of the St. Joseph and Iowa Company.

II. Again, the St. Joseph and Iowa Company had no authority by any of the provisions contained in its charter to sell its franchises, though it had to pledge them. The power to sell was only given by the act of March 24, 1870 (Acts of 1870, p. 90). The deed from the St. Joseph and Iowa Company to the Burlington Company was evidently made by authority of the second section of that act, which, after providing that any railroad company may aid another company in the construction of its road for the purpose of forming a connection, and that any company of this State may extend into

an adjoining State, provides also "Or any railroad company organized in pursuance of the laws of this or any other State, or of the United States, may lease or purchase all or any part of a railroad, with all its privileges, rights, franchises, real estate, and other property, the whole or a part of which is in this State, and constructed, owned, or leased by any other company if the lines of said road or roads of said companies are continuous or connected at a point either within or without this State, upon such terms as may be agreed upon between said companies respectively * * * Provided: That no such aid shall be furnished nor any purchase lease subletting, or arrangements perfected until a meeting of the stockholders; * * * And provided further, That if a railroad company of another State shall lease a railroad the whole or a part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its railroad into this State, such part of said railroad as is within this State shall be subject to taxation, and shall be subject to all regulations and provisions of law governing railroads in this State," etc.

It is true the last proviso speaks of a lease, but does not in terms of a purchase by the foreign corporation, as does the preceding portion of the section, but it does provide for all those cases where
197 the foreign company shall lease a road the whole or a part of which is in this State, or shall make arrangements for operating the same under the provisions of the act, or shall extend its road into this State. When the proviso speaks of the company of another State extending its road into this State, or making arrangements for operating a road the whole or a part of which is in this State, it includes an arrangement by purchase.

The proviso, though using different language, was evidently designed to be as broad as the previous portion of the section, and to include all those cases where the company of the other State is allowed to make arrangements for the operation of the road in this State, whether by lease, purchase, or otherwise.

The Legislature, in giving a corporation of another State power to purchase a railroad in this State, with the privileges and franchises belonging thereto, had the undoubted right to prescribe the terms upon which the purchase could be made. As was said in Owen *vs.* St. L. & S. F. R. R. Co., 83 Mo. 455, when speaking upon another subject, the manifest policy was to get legislative control of all railroad corporations. The Burlington Company by availing itself of the provisions of this act of 1870 thereby signified its acceptance of the provisions thereof, and is bound thereby.

It follows that the Burlington Company could not and did not acquire the immunity from taxation. It does not pass to that company at all, and the property acquired by the purchase became subject to taxation, including the branch.

The part of the main line from Unionville to St. Joseph has never been built. The other portion, some fourteen miles in length, was built by the Burlington Company. As to the branch, it is not even shown that preliminary surveys had been made until after the date of the deed, though two counties had made subscriptions for stock

thereto. From the date of the deed the directors of the Bur-
198 lington Company occupied the same relation to the branch that the directors of the St. Joseph and Iowa Company had before occupied.

If, as we have seen, the Burlington Company did not acquire the immunity from taxation, it is difficult to see how any branch built by it could take on the exemption.

Any branch it might build became also subject to taxation.
199 III. Referring again to the mortgage on the branch road of date April 1, 1872, it will be seen it was made by the directors of the Burlington Company at the request of the stockholders in the branch. The authority contained in the branch act of 1868 is as follows:

"They may borrow money and issue bonds secured by mortgage on such branch road to aid in its construction, and in general may operate, lease, sell, or consolidate with any connecting road distinct and separate from their main line, and in any other way may manage or dispose of such branch as by law they may be authorized with reference to their main line and separate therefrom."

There is a provision in the act of Nov. 5th, 1857, which gives the St. Joseph and Iowa Co. power to pledge their road and property "with the franchises of said road" to raise money to liquidate debts, etc. There is not a thing in the act of 1868 which can by any possibility be construed to authorize a transfer by mortgage or otherwise of the immunity from taxation, if any the branch road ever had; but if that act is to be read with the charter provision above quoted, still there is no authority to convey by mortgage or otherwise such right of exemption. Morgan *vs.* Louisiana, 93 U. S., 217; Railroad Company *vs.* Commissioners, 113 U. S., 617.

These decisions show that exemption from taxation is a personal privilege to the person or corporation to which it is given—incapable of transfer unless there is express statutory authority therefor.

Franchises, it is said in the first of the above cases, "are positive rights or privileges, without the possession of which the road of the company could not be successfully worked. Immunity from taxation is not one of them."

There is nothing in either of these acts or the act of 1870
200 which calls for a broader signification to be given to the term "franchises" than is given in the foregoing definition.

It must follow that there never was any authority given by law to convey or assign by pledge the right to be exempt from taxation, and it is, therefore, immaterial what words were used, either in the mortgage or decree of foreclosure.

Other questions were discussed, but it is unnecessary to consider them, as they cannot change the result.

The judgment in the first of these cases is, therefore, reversed and the cause remanded; that in the other is affirmed.

All concur.

F. M. BLACK, *J.*

201 And afterwards, to wit, at the same term, and on the 24th day of May, 1886, there was a notice of motion for rehearing filed in said cause.

Which said notice is in the words and figures following, to wit:

In the Supreme Court of Missouri. April Term, 1886.

THE STATE *ex rel.* John F. Guffey, Collector &c., Respondent,
against
THE CHICAGO, BURLINGTON & KANSAS CITY RAILWAY COMPANY, Appellant. } No. 4003.

To S. P. Huston, Esq., attorney for the above-named respondent:

You are hereby notified that on the 24th day of May, 1886, a motion will be filed in said cause in said court by the appellant for a rehearing therein.

L. T. HATFIELD,
A. W. MULLINS,
Attorneys for Appellant.

I hereby acknowledge service of the above this 22 day of May, 1886.

S. P. HUSTON,
Attorney for Respondent.

And afterwards, to wit, at the same term and on the same day, the following further proceedings were had in said cause, to wit:

Appeal from Putnam Co. Cir. C't.

STATE *ex rel.* John F. Guffey, Collector &c., Resp.,
vs.
C., B. & K. C. R'Y Co., App.

Comes now the said appellant, by attorney, and files its motion for a rehearing herein.

Which said motion is in the words and figures following, to wit:

202 *Motion for Rehearing.*

In the Supreme Court of Missouri. April Term, 1886.

STATE *ex rel.* Guffey, Collector, Respondent,
vs.
CHICAGO, BURLINGTON & KANSAS CITY RAILWAY COMPANY, Appellant. } No. 4003.

Now comes the appellant and moves the court to grant it a rehearing in the above-entitled cause, and for reasons therefor assigns that the court has overlooked the statutory provisions and the controlling decisions of this court especially applicable to the appellant cor-

poration, some of which were duly submitted, and others were not called to the attention of the court through inadvertence of counsel. The attorney for appellant, the writer of the brief in that behalf, in the preparation thereof forgetting that his own intimate acquaintance with the statutes and decisions in relations thereto and that the solicitude of himself was not participated in by the court, failed to give special prominence to the same in his brief, merely inserting them in classes with slight comment, and in his oral argument dwelt only upon one proposition, viz., that of the effect of the act of March 24, 1870, in relation to merging of corporations of this State with those of adjoining States, and did not then call attention to the controlling decision in that connection (*i. e.*, Scotland County *vs.* The M., I. & N. R. R. Co., 65 Mo., 125), but left the court the alternative of wading through some fifty pages of printed matter and numerous substantiating decisions, or deciding it as an abstract proposition upon first impression without assistance or reference to property rights and securities involved, fully sustained by the unnoticed statutes and decisions. The writer of the opinion seems to have adopted the latter alternative.

The appellant's counsel possibly inexcusably lost sight of the fact that while he was watching over the building up of his company's title *that* this court had decided many hundred cases upon different subjects foreign to his claim, and that each case should be presented with full force, *and* if for the first time; and he hopes his client may not be so severely punished for his inadvertence as the maintenance of the opinion at bar would cause.

I.

Therefore it is suggested that, in reference to the branch line, the controlling question is the force of the original act incorporating *of* the St. Joseph and Iowa Railroad Company and the amendments thereto and general laws applicable.

203 In the case of the State of Missouri, *ex rel.* Circuit Att'y, *vs.* Cape Girardeau & State Line R. R. Co., 48 Mo., 468, decided at the October term, 1871, this court for the first time placed its construction upon the effect of the constitution of 1865, as regarded corporate charters prior to the adoption of that instrument. It was then held that amendments could be made and that such acts were not in conflict with the constitution. The promoters and stockholders of the St. Joseph and Iowa Railroad Company had acted upon that theory in securing the amendment to this charter dated March 19th, 1866. In that amendment the General Assembly recognized the fact of organization and commencement of work prior to 1861; and, upon the surrender of the right to fix rates of toll for freight and passenger service, the company was given further time within which to complete its line. The record, however, discloses the fact that it was nearly all completed before the original time expired.

On the 21st of March, 1868, the General Assembly, having in view the provision of greater commercial facilities, enacted the branch line did act. (Acts 1868, p. 90.)

This act was simply a general statutory amendment of all charters containing the power to which it referred, and did not attempt to abridge or enlarge any power whatever. This court, in State, *ex rel.* St. J. & Ia. R. R. Co., *vs.* Sullivan Co., 51 Mo., 522, announced that doctrine to be correct and very forcibly reaffirmed it in Cooper *vs.* Sullivan Co., 65 Mo., 542.

A review of the reasoning by which the court reached its conclusion on this part of the case, will show that material and decisive considerations were overlooked and force given to others that are totally without weight. The court properly enough declared the test that "if this property is free from taxation it is because of the charter privileges of the St. Joseph and Iowa company;" *i. e.*, because it is the property of that company. The charter of the company exempts its property, and if this branch line belongs to the company it is, in "express terms," within the subject of the exemption. It must be remembered that there is no provision, constitutional or statutory, declaring otherwise in this aspect of the case. The decisive and controlling proposition is, was this branch road a part of the property of the St. Joseph and Iowa company? "This the charter has in view," for it says so in clear terms. The original charter grants power to build branches, and such branches when built were there treated as a part of the company's property. They stood upon no other or different footing than any other property it had. All was alike exempt. And so far as the taxability of the branch road is concerned the act of March 21, 1868, does not undertake to make any express or different provision. The court, however, notes certain requirements and provisions of this act and attaches to them the force of an applied repeal of the exemption granted in the charter of 1857. Of course, waiving for the moment the question of power to repeal, to work such repeal by implication there must be an irreconcilable conflict, and, such repeals being disfavored, one will never be held unless unavoidable. The reasons assigned by the court may be grouped and their soundness questioned *seriatim*—

a. "By the act (of 1868) the stock subscriptions are to be made in the aid of the branch and the certificates must so state." The weight of this reason must be determined by the inquiry whether any other or different stock in a distinct company is thereby created. Unless this is done, it is still stock in the original company, and, as such, exempt, together with the property it represents. The act of 1868 does not provide for the creation of new corporations. Of course, without a corporation there can be no capital stock. The act applies only to corporations existing and authorized by their charters to build branches and not to any other company; and certainly there is no authority in any one to proceed under that act unless it is a corporation within the terms of its first section. Such a corporation is entitled "to receive subscriptions to stock" for the purpose of aiding in the construction of the proposed branch. To what stock? There is and can be but one capital stock—that of the company under its charter; and the fourth section of the
204 act of 1868 provides in express terms that the stock sub-

scribed to aid the branch shall be a portion of the stock of the company. The holders of this "branch stock" are given "the same rights as other stockholders in the choice of officers." There is but one set of these; but one president, secretary, treasurer, and board of directors, and these are provided for and invested with the powers conferred by the charter of the company. These have the management and control of the property and exercise the acts which fix its ownership.

Pullman Car Co. *vs.* Railway Co., 115 U. S., 587, 597.

b. "The cost and expenses of construction and operation of that and the main line are to be kept separate." But these accounts were all to be kept by the officers of the main line and as a part of its business. There was no separate organization with reference to these accounts of the branch roads.

c. "Neither can participate in the profits of the other." This is a mere regulation of the business affairs of the company, and on a par with the statutory provisions concerning preferred stock, etc. The simple effect of this requirement is that profit on stock shall be paid from the income of that part of the line to which it is subscribed; but the stock is all that of the same corporation, and so, too, the property belongs to the same company.

d. "Neither can be held for the debts of the other." This is, in part, a necessary sequence to the preceeding fact, and the explanation given under that head applies here also. While neither piece of property can be held liable for the expense of constructing the other, yet so far as the general liability of all of the property of the company for its debts is concerned a branch road is completely subject to it. Both lines are alike property of the company. When a judgment is rendered against the company it is enforceable against all its property alike—branches and all. The requirement of separate accounts is merely to insure the application of funds raised under the act of 1868 to the construction of the branch road indicated, and to prevent its misappropriation. After the fund had been properly applied the branch became a part of the parent company's property, and stood upon the same basis occupied by its other property.

e. "The branch stockholders have nothing whatever to do with the main line." Section 4 of the act of 1868 gives the stockholders named "the same rights as other stockholders in the company in the choice of officers;" *i. e.*, in controlling and managing the affairs of the company, which is practically ownership, and does not deserve to be belittled by an "only."

Pullman Co. *vs.* Railway Co., 115 U. S. 587, 597.

f. "Here we have a branch road by name, and while it had no separate corporate existence, yet for nearly all practical purposes it is a separate organization." This does not meet the question at bar. If the branch line was a part of the property of the St. Joseph and Iowa Company it is exempt by the terms of the latter's charter. It is only by deciding that it was not the property of this company

that it can be held taxable. It surely was property; otherwise it could not be taxed at all. If property, it must have an owner. Under our law all property has an owner until subject to the statute of escheats, and this provision is not here invoked. Hence, here was property, and it had an owner. With due respect, under this opinion, who was this owner? The title of the company seems to be denied, for the property is declared taxable in the face of a provision that the company's property shall be exempt. Only persons, natural or artificial, can hold property or be recognized by our law. Title in a natural person is not present, and the only artificial persons in the case are the St. Joseph and Iowa R. R. Co. and its successors. It comes to this, then, that the latter must own this property. The act of 1868 does not permit any other state of affairs. Unless this were so the branch line could never have been established, located, or built. Having come to be a part of the property of the company, it stood within the rule invoked by us and conceded in the case that "the property (all of it, not merely a part, for there is no authority for applying different rules in this respect to one class of property than to another) shall be exempt from taxation."

205 The construction for which we contend in this case is not only *res adjudicata* in this court, but should be adhered to upon considerations of *stare decisis*. In 1873 this court, by its judgment awarding a mandamus, compelled Sullivan county to issue $200,000 in bonds in payment of a subscription in aid of this very branch line at bar. The subscription was made without a vote of the people by the county court under the power given in the charter of the St. Joseph and Iowa R. R. Co., and was to the capital stock of that company (51 Mo., 525); and so this company, as relator, enforced the delivery of the bonds. There was no suggestion of "divorce" in that case. Unless the subscription of Sullivan county had an existing corporation to whose capital stock it could apply, it was void. The St. Joseph and Iowa R. R. Co. was this corporation, and the charter of that company furnished the authority to the county court to act at all. The branch road was regarded, indeed, it must necessarily have been held, to have been a part and parcel of the St. Joseph and Iowa R. R. Co., and derive its being and stand with the rights granted by the charter of the main line. The opinion in that case also shows that this defendant's predecessor, The Burlington and Southwestern R'y Co., was then at work constructing said branch road and expending large sums of money for that purpose. (51 Mo., 527.) In 1877 this case was fully affirmed and the points decided thus summarized: "The subscription of Sullivan county to the St. Joseph and Iowa R. R. Co. for a branch of said road, which was transferred to the Burlington and Southwestern R. R. Co., was held binding." (Cooper *vs.* Sullivan County, 65 Mo., 542.) It is apparent, without argument, that, if the opinion now at bar is correct, the bonds referred to and held valid in the cases in 51 and 65 Mo. are void. There was no authority to subscribe bonds for branch roads inherently, nor in the branch act of 1868, but the power must be found in some other statutory provision; and the charter of the

St. Joseph and Iowa was the only one giving this authority. If the St. Joseph and Iowa company was not the owner of this branch—if this branch was not a part of its property—its charter could not be invoked as authority for issuing bonds to assist in its construction. An array of eminent attorneys appeared for the county before this court in that case, yet it does not seem even to have been hinted by court or counsel that there was any "divorce," or even incompatibility of temper, between the parent line and the branch. Both were assumed, so far as concerned ownership and the rights and privileges applicable to them, and their standing and relation under the act of 1868, to be the property and within the charter of the St. Joseph and Iowa R. R. Co. Nor was this ever doubted before. The same principle is found in other cases in this court. If now departed from the bonds compelled to be issued by this court are or were void. If outstanding, property rights are destroyed. If paid, an unjust burden has been imposed upon the county. As the two cases decide upon the rights of these very parties and refer to and construe the statutes fixing those rights they have become a rule of property and the law of their relation to each other. That the present company proceeded on the faith of these rulings, and has made investments in reliance on them, is evident throughout its dealings and proceedings. The bonds compelled to be issued by Sullivan county bore 7 per cent. interest (51 Mo., 526), making an annual charge of $14,000 on that county. Those cases were, therefore, of much greater importance than those now at bar. The annual taxes on the property before the court are about $900 or $1,000; so that Sullivan county has been compelled to pay $14,000 per annum for interest and a principal of $200,000 upon one construction of the statute, and now a charge is adjudged on this defendant by another construction, which is irreconcilable with and directly the converse to that given the same statute in the previous cases involving this precise question. The same statutes cannot furnish foundation for both rulings.

In Atlantic and Pacific R. R. Co. *vs.* St. Louis, 66 Mo., 228, this court very clearly pointed out the spirit of branch-road legislation in this State, and held that when a branch road was built, under authority to do so conferred by statute, it was a part of the property of the company and subject to be treated as such.

The well-settled law of this State is very concisely stated in Mechanics' Bank *vs.* Kansas City, 73 Mo., 555. In 1857 the General Assembly passed a law concerning banks and banking insti-
206 tutions. Provision was there made for the establishment of banks, and section 32, article 1, prescribed the amount to be paid as taxes. (Acts 1856–7, pp. 14, 22.) A subsequent statute declared that the amount so provided should be in full of all taxes of every kind whatever. (Acts 1860–1, p. 13, § 12.) Article 2 of the act of 1857 provided for the establishment of branch banks (pp. 24, 25). The attention of the court is particularly and earnestly called to this article, in the light of the theory that a "divorce" in the matter of the regulation of business or the rights of stockholders puts a branch institution (and it is, of course, immaterial whether

it be one of a bank or of a railroad) upon any different basis with reference to an exemption from taxation than its parent occupies. Under the act of 1857 a specified portion of the capital of the parent bank was required to be set aside and applied to branches and to be placed for subscription for that purpose. When the requisite amount of capital for a branch was subscribed the parent bank was notified and a time fixed for the election of a separate board of directors for the branch. Five of these (a majority) were elected by the subscribers to the branch bank and the other four by the parent bank. These nine directors were required to elect the officers and organize the branch and to manage its business. (§§ 1–2, p. 24.) The Mechanics' Bank established a branch at Kansas City, and, taxes having been levied upon the property of this branch, the question of their validity came here. The court quoted section 32 of the act of 1857 and section 12 of the act of 1861, above referred to, and said: The language of the above provisions is perfectly free from ambiguity, and constitutes and creates a contract between the State and the plaintiff bank (which was the parent bank), in effect exempting plaintiff from all liability to pay any other tax than as provided in the sections referred to. It would be difficult to frame a more complete separation than that prescribed in the act of 1857 between parent and branch banks. The stock of the latter was separately subscribed; a distinct and independent board of directors was elected in a mode other than that provided for the election of the directors of the parent bank; and, what would be decisive, if the theory of an independent existence of a branch be recognized at all this board of directors of the branch bank controlled and managed its affairs. Every ground assigned in the pending case for the conclusion reached exists in the bank act. Added to which is the controlling one that the absolute management of the branch bank as a separate institution, doing business at another place, is committed to a board beyond and free from the control of the parent bank. No express provision of law exempted branchbanks from taxation, nor do the sections referred to in terms apply to such branches. Yet this court, treating the branches as a part of the parent bank, held their property entitled to the same exemption. The law is stated to be thus settled and no room for doubt is perceived. It needs but a casual comparison of the bank acts with the branch railroad act of 1868 to show that much more reason exists for holding a legislative "divorce," or rather emancipation from the parent bank under the former than one from a railroad company in the latter case. Under the bank acts the subscribers to the stock of the branch controlled it absolutely and had no voice in the management of the parent bank. Under the railroad legislation the vote in the management of the parent road was expressly given the same class of subscribers. (Section 4, act 1868.) If the considerations urged by the court in this case are important the bank case cannot be sustained. The language and tone of the opinion in the latter case plainly indicate the conviction of the court that it was declaring well-settled law. (73 Mo., 555, 558.) So, too, the relief in that case was adjudged to and on application of the parent bank, and it was regarded as

the owner of the property of the branch bank, and this property is entitled to the same exemption from taxation that the other property of the main bank had.

This court there also announced in pointed terms the contractual character of such an exemption, and the want of power in
207 the Legislature (where the right [to] do so is not reserved) to modify, change or repeal it, and the like want of authority in the court to vary or impair it, as abundantly and clearly settled. The lucid language of Mr. Justice Davis was approvingly quoted: "If the contract exempting a corporation from taxation is plain and unambiguous, and the meaning of the parties to it can be clearly ascertained, it is the duty of the court to give effect to it the same as if it were a contract between private persons without regard to its supposed injurious effects upon the public interests." (73 Mo., 559.)

Here the privilege is granted in the language indicated. All the property of the St. Joseph and Iowa R. R. Co. is exempted. Hence, the inquiry is narrowed down to the consideration whether such a branch is the property of that company. The act of 1857 conferred power to build branches, and these branches, it was manifestly regarded, would be a part of its property. As such, they are exempt. The act of 1868 did not introduce a different rule in this respect. It conferred no new power to build branches, for in terms that act is applicable only to such companies as previously had the power to build branches. It then proceeds to describe the mode of executing this power. Nothing more. The title to the branch when built is still to remain as a portion of the property of the parent company. If any different or special provisions for its management are prescribed, they are mere regulations of the business affairs of the company, and these regulations apply both to main and branch lines. The legislative intent to exempt branches of the St. Joseph and Iowa R. R. Co. is as plain and unambiguous as a similar intention to exempt the main line. It was contemplated that the road should consist of both main line and branches. The act of 1868 did not, if it could have done so, impair the exemption previously granted. Certain it is that it exacted no surrender of the privilege. That was not one of the conditions prescribed to obtain the benefits of that act. The St. Joseph and Iowa R. R. Co., when it built a branch line, exercised a power and obtained a property authorized by the act of 1857—its charter. It looked to the act of 1868 only as a mode for executing that power. The questions arising in the bond cases are identically the same. The act of 1868 gave no power to county courts to subscribe bonds. That power was found in the act of 1857. The act of 1868 merely furnished the mode of exercising the power to subscribe; but the bonds were not for that reason void. On the contrary, the act of 1857 was looked to as indissolubly linked to the act of 1868, and they were regarded as relating to one and the same matter, the former as providing the corporation and a power to subscribe, and the latter providing for the branch, in aid of which stock in the parent and only company was to be subscribed.

II.

As to the power of the St. Jo. & Ia. R. R. Co. to enter into the contract of May 23, 1871, it is suggested that it is correct as a general proposition that all corporations have all the powers necessary or incident to the proper transaction of its business. It is said: "The power to sell was only given by the act of March 24, 1870. (Acts of 1870, p. 90.) The deed from the St. Joseph and Iowa Company to the Burlington Company was evidently made by authority of the second section of that act, which, after providing that any railroad company may aid another company in the construction of its roads for the purpose of forming a connection, and that any company of this State may extend into an adjoining State;" provides also, "or any railroad company organized in pursuance of the laws of this or any other State, or of the United States, may lease or purchase all or any part of a railroad, with all its privileges, rights, franchises, real estate, and other property, the whole or a part of which is in the State, and constructed, owned or leased by any other company, if the lines of said road or roads of said companies are continuous or connected at a point either within or without this State, upon such terms as may be agreed upon between said companies respectively." * * * It would be difficult to conceive more specific terms and conditions. The power to convey is absolute. It does not contemplate a removal of the line of road, but its construction. The act of Mar. 24, 1870, *supra*, was in the interest of
208 commerce and not a source of revenue. It is treating of railroads domiciled in Missouri—not foreign companies. It does not authorize a foreign company to sell or lease. It is speaking of railroads in Missouri, created under the laws thereof.

In the latter part of the section it is "Provided further, That if a railroad company of another State shall lease a railroad, the whole or a part of which is in this State, or make arrangements for operation the same as provided in this act, or shall extend its railroad into this State, such part of said railroad as is within this State shall be subject to taxation and shall be subject to all regulations and provisions of law governing railroads in this State." The opinion states: "It is true the last proviso speaks of a lease, but does not in terms of a purchase by the foreign corporation, as does the preceding portion of the section, but it does provide for all those cases where the foreign corporation shall lease a road, the whole or a part of which is in this State, or shall make arrangements for operating the same under the provisions of the act." It is contended that by making "arrangements" is meant the compliance with the terms of the section in reference to the different arrangements provided for "aiding, purchase, lease, sub-letting, or arrangement," as the case might be. The language of the section in that portion relating to leasing lines and the liability of foreign corporations effectually disposes of the theory that it includes purchased roads. Thus: "And a corporation of this State leasing its road to a corporation of another State shall remain liable as if it operated the road itself; and a corporation of another State, being the lessee of a railroad in

this State, shall likewise be held liable for the violation of any of the laws of this State, and may sue and be sued in all cases and for the same causes and in the same manner as a corporation of this State might sue or be sued if operating its own road; but a satisfaction of any claim or judgment by either of said corporations shall discharge the other." By what course of reasoning could a corporation sue or be sued, or subjected to any liability, if sold with its rights, privileges, franchises, and corporate property? How could it be merged in another corporation and retain a separate corporate entity having property subject to levy and sale or sequestration?

The words "purchase" and "lease" have each a different and distinct technical meaning, and it must be conceded that the law-making power of the State understood this, and used the terms advisedly.

Ex Parte Slater, 72 Mo., 102.
State *vs.* Kelm, 79 Mo., 515.
State *vs.* Briscoe, 80 Mo., 643.

There is no inconsistency in the section; the provision relating to taxation of foreign companies applies only to foreign companies distinctively, and it is merely a proviso against the importation of privileges from adjoining States, such legislation being necessary to secure control. "A corporation dwells in a place of its creation, but may do business wherever its charter allows and local laws do not forbid." Canada Southern R. R. Co. *vs.* Gebhard, 109 U. S., 527. Morawetz's Private Corporations, sec. 505, 512. In Story's Conflict of Laws, 36, 37, it is said: "In the silence of any positive rule, affirming or denying, or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless they are repugnant to its policy or prejudicial to its interests. It is not the comity of the courts, but the comity of the nation which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of municipal law are ascertained and guided." "Corporations of foreign States have all powers of similar corporations of the State unless restricted." Bank of Augusta *vs.* Earle, 13 Peters, 592. Cowell *vs.* Springs Co., 100 U. S., 55. Christian Union *vs.* Yount, 101 U. S., 383. In the latter case is said: "If the policy of the State or Territory does not permit the business of the foreign corporation in its limits, or allow the corporation to acquire or hold real property, it must be expressed in some affirmative way." It is therefore apparent that the General Assembly had in mind the foreign corporate entity and control of property of such corporation. If
209 it leased a railroad it assumed its liabilities and privileges, and, on the other hand, if it built its road into the State it was subject to the general law touching railroads. The case of Scotland Co. *vs.* M., I. & N. R. Co. 65 Mo., 125, is decisive of this question. Section 2 of the act of 1870, *supra*, is the only authority for roads of this State and adjoining States to consolidate. It was agreed in that case that the act had been complied with, but of course the

legal effect could not be agreed away. The court held the exemption maintained. The record in this case shows that there was no building into this State by a foreign corporation. The line in Missouri was built with money derived from stock and bonds of the Missouri line, and was to all intents and purposes a Missouri institution. Suppose the name had been continued "St. Joseph and Iowa Railroad Company." It would have made no difference, for the question is to be determined by the intention and effect. Exemption from taxation is a privilege, a property right; when clearly conferred it is as much the property of the corporation as its road-bed. A railroad or other business venture is more or less profitable according to its earnings, capacity, and expense of operation. A railroad company with exemption from taxation would, perforce, have as much more money annually as the taxes would amount to. It would be as idle an argument to say that a twenty-dollar gold piece was a thing of value as to elaborate the value of tax exemption. In Phila., Wil. *vs.* Balt. R. R., 10 Howard, 394, it was held that a merger by consolidation of property rights and privileges carried exemption from taxation. That idea is reiterated in Tomlinson *vs.* Branch, 15 Wall. 460; Humphreys *vs.* Pegues, 16 Wall., 244; Central R. R. & Bk. Co. *vs.* Georgia, 92 U. S., 665.

Branch *vs.* City of Charleston, 92 U. S., 77.
Paine *vs.* L. E. & L. R. R., 31 Ind., 349.
Sly *vs.* Penn. Cent. R. R., 65 Pa. St., 209.

Would not investors prefer to purchase bonds secured upon property maintained at the minimum expense? It is reasonable to believe that the parties in interest in the case at bar, in looking over the long array of authorities upon this subject, were influenced thereby. We do not believe that a statute that provides for aiding, purchase, lease, subletting, or arrangement, undoubtedly made prolific in inducements to secure railroad facilities, intended or does extinguish the most valuable attributes. The charter must be looked at in the light of the days of its creation and organization. Inducements to build railroads were a necessity, and were bountifully bestowed upon different companies. The desire to secure control of the railroads of the State must be gratified only by proper means.

As said in Mechanics' Bank *vs.* Kansas City, 73 Mo., 559, "If the contract exempting a corporation from taxation is plain and unambiguous, and the meaning of the parties to it can be clearly ascertained, it is the duty of the court to give effect to it the same as if it were a contract between private persons, without regard to its supposed injurious effects upon the public interests.

III.

The ruling that the mortgage of 1872 could not and did not invest the grantee under it with the mortgagor's immunity from taxation is based upon the previous ruling that a branch road is a separate entity, and governed by special rules. This position has already been noticed, and with the correction of the error in that

behalf the ruling in this respect will, no doubt, also be retracted. The act of 1868 is not to be looked to alone for a decisive answer to this question. The charter of 1857 furnishes the power. It may be conceded that the general term "franchises" of a railroad of itself does not apply to the exemption from taxation. But this rule can have no application, for such is not the question here. Counsel for the State in the Guffey case urge that the corporation—the chartered entity—is the main thing, and that this cannot sell itself; that the immunities and privileges which the charter confers upon it are but incidents; that consequently they cannot pass unless the
210 principal thing is authorized to be transferred. The converse necessarily follows, that if the principal thing can be set over the others follow it as necessary incidents. (Resp. Brief, Guffey Case, p. 15.) The court here overlooked the peculiar language in the charter of the St. Joseph and Iowa R. R. Co., which granted the power to mortgage. This does not employ the terms to which the quotation from Morgan *vs.* Louisiana is applicable. Under the rulings of the Supreme Court of the United States and of this court the language in the charter referred to vested authority to transfer the very privilege in question. This language gives authority "to pledge the said road, rolling-stock, machinery, depot-houses, and any other property they may possess, together with the franchise of said road." (Acts 1857, p. 74, § 3.)

A perusal of the charters of the other railroad companies in this State will disclose that this language is different from that there used in the material respect that here "the franchise of the road" is in terms authorized to be pledged, while there the plural word "franchises" of the particular company is used. The adjudications show that the phrases each have a distinct meaning. "Franchises" has a signification much like unto that stated in Morgan *vs.* Louisiana, but the phrase "franchise of the road" describes and includes the very right to exist as a corporation. It is the term employed to describe this right, and it carries with it all the privileges attached to the corporation creation. It includes all the rights given to the pledging or granting body. A comparison of Morgan *vs.* Louisiana with the subsequent case of Railroad Company *vs.* Georgia, decided by the same court, makes our contention quite too plain for further argument. In the latter case the word "franchise" is declared to be "generic, covering all the rights granted by the Legislature." (98 U. S., 365.) This is its settled meaning in this connection, and by employing it in the act of 1857, instead of the phrase found in the other railroad charters, the Legislature must be conclusively presumed and held to have intended that it should be given its technical meaning. It is a term of art having a fixed meaning, and the circumstance that it was used in this charter cannot be held meaningless. On the contrary, if the legislative intent is to be effectuated it must be construed and defined in accordance with Railroad Company *vs.* Georgia. Any other construction does violence to the language of the Legislature.

The power granted in the act of 1857 covers this exemption within the rule declared by this court in Daniel *vs.* Railway Co., 62 Mo., 43, and recognized in Hovelman *vs.* Railroad Co., 79 Mo., 632. The entire object to be attained by these grants of special privileges to railroad companies is the public benefit to accrue from their construction. The Legislature intended to provide railroads for the people, and to hold out sufficient inducements to capital to build them. It is a matter of general history that in the light of the great expense attached to this construction money must be raised by mortgage. The power to raise this money is given for the purpose of effectuating the object originally in view. The same inducement held out to the corporation was intended to move the loaner to provide the means. To effectuate this intention the loaner must have the same rights as a security that the stockholders of the company have. Each is asked to invest money in a given enterprise on the faith of the granted rights. Not on the faith of a part, but on the strength of all of them. The Legislature did not intend that a certain company or the named persons alone should have this exemption, but that it should attach as an incident to the property and belong to the holder of the franchise. The stock is exempted. This stock is authorized to be transferred, and with the transfer of his stock all connection of the holder with the company and its property ceases. No one has ever doubted that the transferee of such stock was entitled [to] the same exemption as the original subscriber. The stock represents the property, and upon this ground it is conceded that this property is exempt under the same provision. Upon what ground, then, hold that a transfer, in the manner and for the purposes authorized in the act of 1857, of the very thing that gives being to the stock destroys the privilege and withdraws the inducement so solemnly held out by the State?

IV.

211 This destruction is the impairment of the obligation of a contract and hence violation of the Federal Constitution. The original exemption was a valid and binding contract. It could not be annulled in terms by subsequent legislation; nor can the same end be reached under the Constitution of the United States by a construction placed upon such subsequent legislation by a court. Whether the repeal be sought to be accomplished directly or by indirection, the effort must alike be held inhibited by the Federal Constitution.

State Bank *vs.* Knoop, 17 How., 369.
Home *vs.* Rowse, 8 Wall., 437.
Wilmington R. R. Co. *vs.* Reid, 13 Wall., 266.
Pacific R. R. *vs.* Maguire, 20 Wall., 36.
Farrington *vs.* Tennessee, 95 U. S., 679.

L. T. Hatfield, A. W. Mullins, and Smith & Krauthoff, for appellant.

And afterwards, to wit, at the same term and on the 7th day of June, 1886, the following further proceedings were had in said cause, to wit:

STATE *ex rel.* John F. Guffey, Resp.,
vs.
C., B. & K. C. R. R. Co., App.

Now, at this day the court having fully considered and understood the motions heretofore filed for rehearing of the above cause, doth order that said motions be, and the same are hereby, overruled.

And afterwards, to wit, on July 7th, 1886, the following further proceedings were had in said cause, to wit:

Appeal from Putnam County Circuit Court.

STATE *ex rel.* John F. Guffey, Collector, &c., Respondent,
vs.
C., B. & K. C. R. R. Co., Appellant.

In vacation.

Now, at this day, there is presented to the Honorable John W. Henry, chief justice, at chambers, a writ of error to reverse the judgment in the above cause, a citation directed to the said plaintiff citing and admonishing it to be and appear at a Supreme Court of the United States on the 2d Monday of October next; also a supersedeas bond in the sum of five thousand dollars ($5,000); which
212 said writ of error is allowed, said citation signed, and bond approved and ordered to be filed and made a part of the record herein. And thereupon it is further ordered that a supersedeas be granted staying all further proceedings upon the judgment herein until the determination of this cause in the Supreme Court of the United States.

Which said bond is in the words and figures following, to wit:

Appeal Bond.

213 Know all men by these presents that we, The Chicago, Burlington & Kansas City Railway Company, as principal, and H. B. Scott and C. P. Squires, as suret-, are held and firmly bound unto The State of Missouri *ex rel.* John F. Guffey, collector of the revenue of Putnam county, in the full and just sum of five thousand dollars, to be paid to the said State of Missouri *ex rel.* John F. Guffey, collector as aforesaid; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this — day of —, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately at the April term, A. D. 1886, of the supreme court of the State of Missouri, in a suit depending in said court between The State of Missouri *ex rel.* John F. Guffey, collector of the revenue of Putnam county, respondent, plaintiff, and The Chicago, Burlington and Kansas City Railroad Company, appellant, judgment was

rendered against the said appellant, and the said appellant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said respondent citing and admonishing it to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday of October next:

Now, the condition of the above obligation is such that if the said appellant shall prosecute said writ to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY COMPANY, [SEAL.]
By J. W. BLYTHE. [SEAL.]
H. B. SCOTT. [SEAL.]
C. P. SQUIRES. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved by—

JNO. W. HENRY, *Judge.*

STATE OF IOWA, } ss:
Des Moines County, }

I, C. P. De Hass, clerk of the district court within and for said county and State, hereby certify that the sureties on the attached bond are amply sufficient for the penalty of the same, and that if said bond was presented to me for approval I would unhesitatingly approve it.

Witness my hand and the seal of said county, affixed at Burlington this 21st day of June, A. D. 1886.

[SEAL.]

C. P. DE HASS, *Clerk.*
By ALEX. HUKILL, *Deputy.*

214 STATE OF IOWA, } ss:
Des Moines County, }

Before me, a notary public, personally appeared H. B. Scott, to me well known, who upon oath states that he — worth over and above his indebtedness the sum of fifteen thousand dollars, and that he owns real property to that amount subject to execution in Iowa and Nebraska.

H. B. SCOTT.

Subscribed and sworn to before me this 21 day of June, 1886.

W. D. EATON, [SEAL.]
Notary Public.

STATE OF IOWA, } ss:
Des Moines County, }

Before me, a notary public, personally appeared C. P. Squires, to me well known, who upon oath states that he — worth over and above his indebtedness the sum of fifteen thousand dollars, and that he own- real property to that amount, subject to execution, in Burlington, Iowa.

C. P. SQUIRES.

Subscribed and sworn to before me this 21st day of June, 1886.

W. D. EATON, [SEAL.]
Notary Public.

UNITED STATES OF AMERICA, } sct:
Western District of Missouri, }

I do hereby certify that the parties subscribing the within bond are respectively over the age of twenty-one years and are competent to contract, and that their signatures to said bond are genuine. I further certify that said bond is good and sufficient.

Witness my hand —— this — day of ——, 187-.

—— ——.

215 STATE OF MISSOURI, ss:

I, Henry W. Ewing, clerk of the supreme court of the State of Missouri, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record & proceedings in the above-entitled cause as fully as the same remain of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at — office in the city of Jefferson, this 14th day of August, A. D. 1886.

[Seal of the Supreme Court of Missouri.]

HENRY W. EWING, *Cl'k,*
By H'Y SHERWOOD,
Dep. Cl'k.

Endorsed on cover: Missouri supreme court. No. 1244. The Chicago, Burlington and Kansas City Railroad Company, plaintiff in error, *vs.* The State of Missouri *ex rel.* John F. Guffey, collector of the revenue of Putnam county. Filed October 22, 1886.

120-569

SUPREME COURT OF THE UNITED STATES.

Motion to Advance the Cause on Docket.

In the Supreme Court U. S. No. 1244.

THE STATE OF MISSOURI *ex rel.* GUFFY, Col. of Putnam Co., D'f't in Error,

vs.

CHICAGO, BURLINGTON & KANSAS CITY R. R., Pl'ff in Error.

B. G. Boone, att'y gen'l, & S. P. Huston, for def't in error.

Writ of Error to the Supreme Court of the State of Missouri.

In the Supreme Court of the United States. October Term, 1886.

THE STATE OF MISSOURI, to the Use of John F. Guffey, Collector of the Revenue of Putnam County, Missouri, Defendant in Error,

vs.

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY CO., Plaintiff in Error.

Now comes the said defendant in error, by attorney, and moves the court to advance said cause and set the same down for hearing at some time during the present term of this court for the following reasons, to wit:

1st. Because it involves the revenue of the State of Missouri and county of Putnam.

2d. Because the railroad, on a portion of which the taxes in suit were levied, extends over one hundred miles through the State, passing through the counties of Putnam, Sullivan, Linn, Chariton, Livingston, and Carroll, all of which property is claimed by plaintiff in error to be exempt from taxation by virtue of charter exemptions, and suits to recover such taxes have been instituted and are now pending in all of said counties except Carroll and Livingston.

3d. Because State and county taxes on the entire length of said railroad are unpaid since 1880, all of which is tied up awaiting the result of this cause.

4th. Because said property enters annually into the estimates to determine the necessary rate to be levied for State and county purposes, and this large and increasing mass of unpaid taxes deranges the fiscal affairs and arrangements of said State, and especially of said counties.

SAMUEL P. HUSTON,
Att'y for Def't in Error.
B. G. BOONE,
Att'y Gen. of the State of Missouri.

The plaintiff in error hereby consents that said cause may be advanced, and will, if this motion be sustained, be prepared to present the case at such time as the Court may order, to be not less, however, than thirty days after the announcement of the order of advancement.

L. T. HATFIELD,
Attorney for the Chicago, Burlington and Kansas City Railway Company, Plaintiff in Error.

120-569

SUPREME COURT OF THE UNITED STATES.

Motion to Advance the Cause on Docket.

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Writ of Error to the Supreme Court of the State of Missouri.

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The plaintiff in error hereby consents that said cause may be advanced, and will, if this motion be sustained, be prepared to present the case at such time as the Court may order, to be not less, however, than thirty days after the announcement of the order of advancement.

L. T. HATFIELD,
Attorney for the Chicago, Burlington and Kansas City Railway Company, Plaintiff in Error.

120-569

FILED
DEC 27 1886
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886,

MONDAY, JANUARY 3, 1887.

THE CHICAGO, BURLINGTON & KANSAS CITY RAILWAY CO.,
Plaintiff in Error,
vs.
THE STATE OF MISSOURI EX REL., JOHN F. GUFFEY, COLLECTOR OF THE REVENUE FOR PUTNAM COUNTY,
Defendant in Error.
No. 1244.

ERROR TO THE SUPREME COURT OF MISSOURI.

STATEMENT OF CASE, ASSIGNMENT OF ERRORS AND BRIEF FOR PLAINTIFF IN ERROR.

L. T. HATFIELD,
A. W. BULLENS, and
KARNES & KRAUTHOFF,
For Plaintiff in Error.

KANSAS CITY:
FOOTE'S PANTAGRAPH PRINT, SHEDDLEY BUILDING, COR. NINTH & MAIN.
1886.

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Supreme Court of the United States.

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THE CHICAGO, BURLINGTON & KANSAS CITY RAILWAY CO.,
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THE STATE OF MISSOURI EX REL., JOHN F. GUFFEY, COLLECTOR OF THE REVENUE FOR PUTNAM COUNTY,
Defendant in Error.
No. 1244.

ERROR TO THE SUPREME COURT OF MISSOURI.

STATEMENT OF CASE, ASSIGNMENT OF ERRORS AND BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This is an action instituted in conformity to a local statute of Missouri, to recover certain State and County taxes alleged to be due from the property of the plaintiff in error, situate in Putman County in that State.

The defense is, that the property referred to is exempt from taxation for State and County purposes. The liability to be taxed for the school and County indebtedness funds is conceded, and the taxes levied for these purposes have been promptly and fully paid.

The exemption relied on is found in the charter of the St. Joseph & Iowa Railroad Company and the amendments thereto. The plaintiff in error claims to be the successor and owner, by successive conveyances and assignments, of this exemption, together with all the other property, rights, privileges, immunities and franchises of the St. Joseph & Iowa Railroad Company; and also of "the franchise" of said company, under and in pursuance to which the property here sought to be held liable to taxation, was constructed and brought into being. The validity of this claim is the question at issue.

The facts and statutory provisions which the record contains, and which must furnish the answer to this question, are substantially as follows:

1. The St. Joseph and Iowa Railroad Company was incorporated by an act of the General Assembly, approved January 22, 1857, the third section of which is as follows:

"Sec. 3. Said company shall have full power to survey, mark, locate and construct a railroad from the City of St. Joseph, in the county of Buchanan, to such point on the boundary line of this State as they may select, and may extend the same to such point or points in the State of Iowa as they

may deem proper. And shall, in all things, be subject to the same restrictions, and be entitled to all the rights, privileges and immunities which were granted to the Hannibal and St. Joseph Railroad Company by an act entitled, 'An Act to incorporate the Hannibal and St. Joseph Railroad Company,' passed at the session of the General Assembly, and approved February 16, 1847, and, also, of the amendments to the charter of the said Hannibal and St. Joseph Railroad Company, passed at the sessions of the General Assembly, and approved February 23, 1853, and February 24, 1853, and March 3, 1855, so far as the same are applicable to the company hereby created (and not inconsistent with the powers hereby conferred), as fully and completely as if the same were herein enacted." (Session Laws, 1856-7, p. 107.)

[Print. Rec. p. 18]

Section four of the Act of February 16, 1847, referred to and made a part of the section just quoted, provides as follows:

"Sec. 4. * * * and shall in all things be subjected to the same restrictions and entitled to all the privileges, rights and immunities which were granted to the Louisiana and Columbia Railroad Company by an act entitled, 'An Act to incorporate the Louisiana and Columbia Railroad Company,' passed at the session of the General Assembly in 1836 and 1837, and approved January the 27, 1837, so far as the same are applicable to the company hereby created, as fully and completely as if the same were herein re-enacted." (Acts of 1847, p. 156.)

[Rec. p. 20]

The twenty-fourth section of the act to incorporate the Louisiana and Columbia Railroad Company, is as follows:

"Sec. 24. Whenever the aforesaid amount of one thousand shares are subscribed, all the powers,

privileges, rights, immunities and benefits conferred or intended to be conferred by this charter, shall be invested in the holders of said shares; and when any other portion of the capital stock is subscribed for the same, shall be vested in all subsequent subscribers. Every person who shall cease to be a shareholder shall also cease to be a member of said company, and THE STOCK OF SAID COMPANY SHALL BE EXEMPT FROM ALL STATE AND COUNTY TAXES.
(Acts of 1837, p. 240.)
[Rec., p. 27]

The following other provisions, which are made a part of the charter of the St. Joseph & Iowa Railroad Company, are material to the question at bar.

Section 4 of an act to amend the act to incorporate the Hannibal & St. Joseph Railroad Company, approved February 23, 1853:

"SEC. 4. None of the provisions of the first article of the act entitled, 'An act concerning corporations,' shall apply to the Hannibal and St. Joseph Railroad Company, except sections four, five, six, seventeen and twenty-three of the said act." (Acts of 1853, p. 321.)
[Rec. p.]

The only sections of the "act concerning corporations," which were thus made applicable to the companies which stand under the charter of the Hannibal & St. Joseph Railroad Company, were the following:

"SEC. 4. No corporation created, or to be created, and not expressly incorporated for banking purposes, shall, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold and silver, bullion, or foreign coins, of buying and selling bills of exchange, or

of issuing bills, notes, or other evidences of debt, upon loan, or for circulation as money.

"SEC. 5. When the corporate powers of any corporation are directed, by its charter, to be exercised by any particular body or number of persons, as majority of such body or persons, if it be not otherwise provided in the charter, shall be a sufficient number to form a board for the transaction of business; and every decision of a majority of the persons duly assembled as a board, shall be valid as a corporate act.

"SEC. 6. If any corporation hereafter created by the legislature shall not organize and commence the transaction of its business within one year from the date of its incorporation, its corporate powers shall cease.

"SEC. 17. That all bodies corporate, by any suit at law, in any court in the State, may sue for, recover and receive, from their respective members, all arrears or other debts, dues or other demands, which now are, or hereafter may be, owing to them, in the like mode, manner and form, as they might sue for, recover and receive the same, from any indifferent person who might not be one of their body, any law, usage, or custom to the contrary thereof notwithstanding.

"SEC. 23. That it shall be lawful for any corporation to convey lands by deed, sealed with the common seal of said corporation, and signed by the President or presiding member or Trustee of said corporation; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the Recorder's office of the county where the land lies, in like manner with other deeds." (Rev. Stat. 1855, pp. 370, 373, 375.)

It will be observed that no power to amend, alter or repeal the charter of the St. Joseph & Iowa

Railroad Company was reserved, nor was there a saving provision to that effect among the sections of the general law, which alone were applicable to it.

On the contrary, the special charters in question contained respectively the following provisions:

Section one of the charter of the Hannibal & St. Joseph Railroad company, among other things, provides that "the stockholders shall be *in perpetual succession.*"

Section one of the charter of the Louisiana & Columbia Railroad Company declares that the holders of the capitol stock "*shall have perpetual succession.*"

So section one of the charter of the St. Joseph & Iowa Railroad Company declares that "*the stockholders shall be in perpetual succession.*"

On November 5, 1857, the charter of the St. Joseph & Iowa Railroad Company was amended by the General Assembly, the third section of which amendment was as follows:

"SEC. 3. For the purpose of further enabling said company to construct, equip, and operate said road, they are hereby authorized to pledge the said road, rolling stock, machinery, depots, depot-houses, and any other property they may possess, TOGETHER WITH THE ERANCHISE OF SAID ROAD, for the liquidation of any indebtedness said railroad company may incur in the construction of said road." (Acts 1857, p. 73.)

[Rec., p. 28]

On March 19, 1866, the incorporating act was further amended, and the time for the construc-

tion of the railroad was extended. The preamble to this act is as follows:

"WHEREAS, The Board of directors of the St. Joseph and Iowa Railroad Company, organized as provided by the charter of said company, opened books for subscription to the capital stock of said company, made surveys and commenced the transaction of its business, but were prevented (by the rebellion intervening) from completing said road as required by the terms of said charter; and,

"WHEREAS, The majority of said Board of Directors having failed to take the oath of loyalty, as required by the constitution and laws of the State of Missouri, therefore, to secure the completion of said said road," "Be it enacted," etc.,

"SECTION 1. That JOHN SEVERANCE (and others) shall constitute the Board of Directors of said company. * * * The rights, privileges and immunities that belong or are vested in the Board of Directors by virtue of the act to which this act is amendatory, not inconsistent with this act, together, with the property, rights and credits created by said act, shall belong to and be vested in the board herein named and their successors."

"Sec. 5. Said company shall have authority to construct said road so as to connect with any road or roads in this State or the State of Iowa, and for that purpose may make their road with as many rails and of such gauge as they may determine."

[Rec. p. 29]

On April 19, 1871, the board of directors of the St. Joseph & Iowa Railroad Company caused the following instrument to be filed in the office of the Secretary of State:

"OFFICE OF THE
"ST. JOSEPH AND IOWA RAILROAD COMPANY,
"ST. JOSEPH, BUCHANAN COUNTY, MISSOURI,
"March 25, 1871.

"At a regular meeting of the board of directors of the St. Joseph and Iowa Railroad Company this day, held pursuant to adjournment, at their office in the city of St. Joseph, the following directors being present: John Severance, James A. Matney, William J. Ransom, James H. R. Cundiff, William M. Albin, S. A. Young, and Thomas B. Weakly, constituting a quorum under the by-laws of the company. The following proceedings were had, as appears from the records of said company in its office, to-wit:

"James H. R. Cundiff offered the following preamble and resolutions, which were duly seconded and unanimously adopted:

"WHEREAS, The St. Joseph and Iowa Railroad Company, authorized by law to build branches, deem it necessary, and required by public interest, to build a branch railroad through the central part of North Missouri, and thence southward; therefore, be it

"*Resolved*, That we desire to avail ourselves of the provisions of an act passed by the General Assembly of the State of Missouri, entitled 'An act to aid the building of branch railroads in the State of Missouri,' approved March 21, 1868. Said branch railroad to be designated and known as the Central North Missouri branch of the St. Joseph and Iowa Railroad.

"Said branch railroad to be built from a point of intersection with the main line of the St. Joseph and Iowa Railroad, at or near the town of Unionville, in the county of Putnam, in the State of Missouri, and running thence southwesterly through the county of Putnam, the county of Sullivan, and the county of Lynn, and the town of Linneus, in said Linn county, and thence to Carrollton in Carroll county, thence to the Missouri river at a point at or east of the city of Lexington in Lafayette county, and from thence to such point in Southwest Missouri, as may be hereafter determined by the Board of Directors of our said company.

"*Second, Resolved*, That the president of the company be and he is hereby directed to file a copy of these resolutions with the Secretary of State of Missouri, duly certified as required by law.

"STATE OF MISSOURI, } ss.
"COUNTY OF BUCHANAN, }

"I, John Severance, President of the St. Joseph and Iowa Railway Company, a corporation duly organized under the laws of this State, and authorized by law to build branches, do hereby certify that the within and foregoing preamble and resolutions are a true and perfect copy of the same as they appear on the records of said company.

"In testimony whereof I have hereunto set my hand, and caused the seal of said company to be affixed, this 25th day of March, 1871, at the office in the city of St. Joseph, Mo.

"JOHN SEVERANCE,

"*President St. Joseph and Iowa Railroad Co.*

[SEAL.]

"ATTEST:

"JAMES A. MATNEY, *Secretary.*"

[Rec., p. 30]

The authority for this proceeding is found in the following provision of the charter of the Louisiana & Columbia Railroad Company, already referred to, and which was incorporated into the charter of the St. Joseph & Iowa Railroad Company:

"SEC. 7. * * * they shall have power to extend branches from the point of commencement, in said town of Louisiana, to any other part of said town; also to extend a branch or branches of said road into, or through the town of Clinton, in the same county. *They shall also have full power and authority to make any other branches along said road, or at the termination thereof, as they may deem necessary or the public convenience require.*"

Rec. p. 23.

The act of March, 21, 1868, referred to in the resolutions above set out, is as follows:

"SEC. 1. Any railroad company in this State authorized by law to build branches, and wishing to avail themselves of the provisions of this act, shall, by its board of directors, pass, and cause to be entered upon its records, a resolution setting forth such desire, and designating the name under which such branch shall be built, its point of intersection with its main line and general course, a certified copy of which resolution shall be filed with the Secretary of State, after which they shall be governed by the provisions of this act.

"SEC. 2. Whenever any such railroad company shall undertake the construction of a branch designated as provided in the first section of this act, they shall receive donations or subscriptions to stock to aid its construction in the name of such branch, which shall be expressed in the certificate of stock issued; the cost and expenses of constructing and operating such branch shall be kept separate and distinct from expenses on the main line; they may borrow money and issue bonds secured by mortgage on such branch road to aid in in construction, and, in general, may operate, lease, sell, or consolidate with any connecting road, distinct and separate from their main line, and in any other way, may manage or dispose of such branch, as by law they may be authorized with reference to their main line, and separate therefrom."

"SEC. 3. Any such branch road so constructed shall not be holden for any debt, lien, or liability of the main line, nor shall the main line be holden for any debt, lien or liability of such branch. Any dividends of profits arising out of the business of such branch road shall be divided among the stockholders in said branch, and in all respects the interest of the stockholders in the branch shall be kept separate and distinct from the interests of the stockholders in the main line.

"SEC. 4. The holders of stock in any railroad company which was subscribed in aid of the construction of a branch road, according to the provisions of this act, shall have the same rights as other stockholders in the company in the choice of officers; in all matters directly and specially affecting the interests of such branch the stockholders in such branch shall control, and, for such purpose, the directors, under their by-laws may, or on the petition of parties representing one-tenth of such stock, shall, call a meeting of the stockholders in such branch, setting forth the object of such meeting; and at any such meeting such stockholders may instruct the Board of Directors in all matters relating especially to their interests, and they shall be governed by such instructions, if not inconsistent with the laws of the State and the powers of such company." (Acts 1868, p. 90.)

Immediately after the adoption of the resolutions set out, work of construction was commenced, surveys were made, subscriptions to capital stock secured, right-of-way procured, such right-of-way being secured in the name of the St. Joseph & Iowa Railroad Company for the use of the Central North Missouri Branch thereof. The subscriptions to stock were made to the same Company and for the same use, and the proceeds thereof were applied to the construction of this branch. At this point a contract was entered into between the St. Joseph & Iowa Railroad Company and the Burlington & South Western Railway Company, the essential features of which are as follows:

"THIS INDENTURE, Made and entered into this 23d day of May, A. D., 1871, by and between the St. Joseph and Iowa Railroad Company of the first part, and the Burlington and Southwestern Rail-

way Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, of the second part,

"WITNESSETH, That whereas, the said party of the second part is duly organized and authorized by the laws of the State of Iowa, to construct and operate a railroad in said State, and to extend the same into the State of Missouri; and, whereas, the said party of the second part have located the line of railroad to a point on the boundary line of the States of Iowa and Missouri, on the most practicable route between Moulton, in Appanoose county, Iowa, and Unionville, in Putman county, Missouri; and, whereas, said second party are desirous of extending their line of road into the State of Missouri, and on the most practicable route from said Unionville, in said Putman county, to St. Joseph, in Buchanan county, and to build and operate said road upon said line; and, whereas, the said party of the first part, a company duly incorporated by an act of the General Assembly of the State of Missouri, entitled 'An act to incorporate the St. Joseph and Iowa Railroad Company,' approved January 22, 1857, and an act amendatory thereto, passed March 19, 1866, are authorized to survey, mark, locate, and construct a railroad from the city of St. Joseph, in Buchanan county, Missouri, to such point on the boundary line of the State, between said States of Iowa and Missouri, as they may select; and, whereas, the board of directors of said first party have selected the same point on said boundary line on said States, as the point on said State line to which they will extend their line, which has been selected and determined upon by said party of the second part, and have determined to locate their said line upon the most practicable route between the said city of St. Joseph, and the said point on said boundary line aforesaid; and, whereas, the lines of said parties connect at the said point on said State line, and make one continuous and connected line of railroad from the city of Burlington, in the State of Iowa, to the said city of St.

Joseph, in the State of Missouri; and, whereas, it is deemed to the interests of both companies that the entire line aforesaid should be built, owned and operated as one line and by one company; and, whereas, the said second party have already constructed a portion of their road in the State of Iowa, and are engaged in building the same westerly towards the point on said boundary line of said States aforesaid, and are desirous of extending the same into the State of Missouri, to said town of Unionvile, and thence, on the most practicable route, to the city of St. Joseph and upon the line aforesaid, and are desirous of acquiring the rights and franchises owned and held by said first party, and of building their road into the State of Missouri under and in pursuance of the charter-rights and privileges so owned by said first party; and, whereas, it is to the interests of all the parties that said road should be built as early as possible, and it is believed the same will be facilitated by such transfer:

"Now, therefore, know all men by these presents, that in consideration of the premises and the sum of $50,000 in hand paid by said second party, and for other good and sufficient considerations, and in order to effect the objects and purposes aforesaid, the said party of the first part, in pursuance of the authority of the board of directors of said company, and of the written consent of the stockholders thereof, as required by law, do hereby give, grant, bargain, sell, convey, and confirm unto the said party of the second part, their successors, and assigns forever, all and singular the railroad and other property of said party of the first part situated and being in the State of Missouri, acquired and to be acquired, together with all the rights, privileges, franchises, powers and authority owned or held by said first party under and by virtue of its said charter and the amendments thereto, and by virtue of any law of the State of Missouri: with the right to survey, mark, locate, build, construct, and operate the said railroad in the State of Missouri, between the *termini* above mentioned, and

in so doing to be subject to the same restrictions and entitled to the same privileges, rights, franchises and immunities to which the said first party are or would be entitled under like circumstances; and the said first party hereby sells, transfers and assigns unto said second party all subscriptions of stock, donations, and all township and county aid of any and every kind to which said first party is or may be entitled, or which has been, or hereafter may be, subscribed to said stock of said first party, with the right to receive, collect, hold, and use the same in the construction of said road in the same manner and to the same extent as said first party are or may be authorized to do; hereby intending to substitute the said second party to every right of property and to all privileges, franchises, and immunities in the State of Missouri to which said first party are or may be entitled, either in law or equity, or to which they would have been entitled if they had constructed and operated said road as contemplated by said charter, and intending to relinquish to said second party all the rights and privileges aforesaid, free from any future claim of said first party.

"It is understood and agreed that the rights, privileges and franchises hereby conveyed are received by the second party in full payment of the stock subscribed by the individual stockholders of the St. Joseph and Iowa Railroad Company, to the amount of $50,000, that being the amount hereby agreed to be paid to them as a consideration for this coveyance; and said second party agree to release said individual stockholders from any further demands on account of their subscriptions, and to cancel the excess above $50,000.

"It is mutually agreed and understood by and between the parties hereto that such amendments to the articles of incorporation of the said second party are to be procured as soon as the same can be practically done, as will require one-third of the members of the board of directors of said second party to be resident of the State of Missouri until such time as the road shall be completed to the

city of St. Joseph, to be appointed in a manner to be set forth in said articles, and shall hold their offices until their successors are elected and qualified; and, until that time, the following named persons shall constitute the members of the board as aforesaid, to-wit:

* * * * * * * * * *

"It is further mutually agreed and understood that said party of the first part shall, in case this instrument shall not be sufficient to invest and clothe the said second party with all the powers, rights, privileges, franchises, immunities and rights of property hereinbefore mentioned, and hereby intended to be conveyed, and said objects may be accomplished in any other legal and proper manner, or by any other instruments of writing, said first party will enter into such other articles of agreement, consolidation, conveyance, or other necessary stipulations or writings as said second party may, on reasonable notice, require, and as will be competent to carry out the purposes and intentions of this conveyance, upon the considerations and conditions herein expressed. And also that said party of the first part, and all and every person or persons, corporation or corporations, lawfully or equitably deriving any title, estate-right, or interest in or to the property and rights herein granted by, from, under, or in trust for said first party, shall and will, at all times hereafter, and upon reasonable request of said second party, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises, rights, franchises and property hereby granted, or so intended to be, in and to the said party of the second part, as by the said party of the second part, its successors or assigns, or their counsel learned in the law, may deem reasonable, proper, requisite or convenient.

* * * * * * *

"IN WITNESS WHEREOF, The said party of the first part has caused these presents to be signed by its

president and attested by its secretary, and its corporate seal to be fixed, on the day and year first above written.

[Signed]

"ST. JOSEPH AND IOWA RAILROAD COMPANY,

"By JOHN SEVERANCE, *President.*

[Signed]

"BURLINGTON AND SOUTHWESTERN RAILROAD COMPANY,

By JAMES PUTNAM, *President.*

"We, the undersigned, stockholders in the St. Joseph and Iowa Railroad Company, ratify and approve the aboye and foregoing contract :—

"THOS. B. WEAKLEY,
"WILLIAM M. ALBIN,
"T. J. CHEW, JR.,
"J. L. BITTINGER,
"JOHN SEVERANCE,
"JEFFERSON CHANDLER,
"W. T. RANSOM,
"L. A. YOUNG,
"JAMES A. MATNEY."

[Rec. p. 34]

Duly filed in the office of the Secretary of State.

In 1870 the General Assembly had passed the Act, the second section of which, in connection with the charter of the St. Joseph & Iowa Railroad Company, furnishes the authority for this contract. This section became section 57, of Article 2, Chapter 37, page 315 of Wagner's Statutes of Missouri of 1872, and is as follows :

"SEC. 2. That the said chapter is hereby amended by an additional section, to-wit : Section 57. Any railroad company heretofore incorpor-

ated or hereafter organized in pursuauce of law, may, at any time, by means of subscription to the capital stock of any other railroad company, or otherwise aid such company in the construction of its railroad within or without the State, for the purpose of forming a connection of the last mentioned road with the road owned by the company furnishing such aid; or any such railroad company which may have built its road to the boundary line of the State, may extend into the adjoining State, and for that purpose may build, or buy, or lease a railroad in such adjoining State and operate the same, and may own such real estate and other property in such adjoining State as may be convenient in operating such road; or any railroad company organized in pursuance of the laws of this or any other State, or of the United States, may lease or purchase all or any part of a railroad with all its privileges, rights, franchises, real estate and other property, the whole or a part of which is in this State, and constructed, owned or leased by any other company if the lines of the said road or roads of said companys are continuous or connected at a point either within or without this State, upon such terms as may be agreed upon between said companies respectively; or any railroad company, duly incorporated and existing under the laws of an adjoining State, or of the United States, may extend, construct, maintain and operate its railroad into and through this State, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this State upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and provisions of the laws of this State concerning railroad corporations as fully as if incorporated in this State; provided, that no such aid shall be furnished, nor any purchase, lease, sub-letting, or arrangements perfected until a meeting of the stockholders of said company or companies of this State, party or parties to such agreement, whereby a railroad in this State may be aided, purchased, leased, sub-let or

affected by such arrangement shall have been called by the directors thereof, at such time and place, and in such manner as they shall designate, and the holders of a majority of the stock of such company, in person or by proxy, shall have assented thereto, or until the holders of a majority of the stock of such company shall have assented thereto in writing, and a certificate thereof signed by the president and secretary of said company or companies, shall have been filed in the office of the Secretary of State; and provided, further, that if a railroad company of another State shall lease a railroad, the whole or a part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its railroad into this State or through this State, such part of said railroad as is within this State shall be subject to taxation, and shall be subject to all regulations and provisions of law governing railroads in this State, and a corporation in this State leasing its road to a corporation of another State shall remain liable as if it operated the road itself, and a corporation of another State being the lessee of a railroad in this State, shall likewise be held liable for the violation of any of any of the laws of this State, and may sue and be sued, in all cases and for the same causes, and in the same manner as a corporation of this State might sue or be sued if operating its own road; but a satisfaction of any claim or judgment by either of said corporations shall discharge the other; and a corporation of another State being the lessee as aforesaid, or extending its railroad as aforesaid, into or through this State, shall establish and maintain an office or offices in this State, at some point or points on the line of the road so leased or constructed and operated, at which legal process and notice may be served as upon railroad corporations of this State."

The St. Joseph & Iowa Railroad Company was authorized by its charter to locate and construct a

line of railroad from the City of St. Joseph to the Iowa state line, and to establish branches thereof. In pursuance with that authority the Board of Directors located this main line from the City of St. Joseph in a northeasterly direction to the line between the States of Iowa and Missouri, passing through the town of Unionville, in Putnam county, and early in the year 1871 began the construction thereof. In March, '71, a branch line was projected, as shown by the resolution of the Board of Directors heretofore set out, and work was commenced on this line also. After this location and projection the Board of Directors of the St. Joseph & Iowa Railroad Company, with a view to securing a connection with Chicago and other eastern commercial centers, entered into negotiations with the Burlington & Southwestern Railway Company, a corporation organized under the laws of the State of Iowa, and which was engaged in the construction of a railway southwesterly from the City of Burlington, Iowa, to the City of St. Joseph, Missouri. By reason of the inducements mutually possessed, which would make the combined lines of the two companies a through trunk line, instead of two local lines, as they would have been had each continued as a separate organization, it was deemed beneficial, both to the companies in interest and to the public, to enter into the contract of May 23, 1871, above set out. The original articles of association of the Burlington & Southwestern Railway Company, of February 16, 1870, provided for a line of railroad from Burlington, Iowa, in a southwest-

erly direction, by way of Farmington, in Van Buren county, at or near Pleasant Plains, in the county of Decatur, Iowa, and from thence in the most practicable route through the State of Missouri, to the town of Rulo in the State of Nebraska, which line would pass about thirty-five miles North of St. Joseph, Missouri. After making the contract with the St. Joseph & Iowa Railroad Company, the Burlington & Southwestern Railway Company on July 12, 1871, amended its articles of association, and thereby located its line from Burlington, Iowa, in a southwesterly direction, by way of Farmington, to a point on the state line on the most practicable route from Moulton to Unionville, Missouri, and thence by way of Unionville by the most practicable route to the city of St. Joseph, Missouri, "as may be determined upon by the Board of Directors and consistent with the contract made between this Company and the St. Joseph & Iowa Railroad Company of date May 23, 1871. Said line of road to be divided into three divisions: the first or Iowa division to comprise all that portion of said line of road between Burlington and the Iowa and Missouri State line; and the second division, all that portion of said line of road in the State of Missouri, and any extension of said road into the State of Kansas shall constitute the third division."

"Recognizing and ratifying the purchase of the charter and property of the St. Joseph and Iowa Railroad Company, as shown by deed of date May 23, 1871. The second division in the State of Missouri of said road shall be constructed and operated

under and in pursuance of the rights, privileges and restrictions of said charter and the laws of the State of Missouri."

P. Record. p. 37

On the 1st day of August, 1871, the name of the Central North Missouri Branch of the St. Joseph & Iowa Railroad Company was changed to "Linneus Branch of the Burlington & Southwestern Railway Company." On the 1st day of April, 1872, the Burlington & Southwestern Railway Company executed two mortgages in proper form, the one covering its main line, and the other this Linneus branch. These mortgages were to secure certain bonds of the company, the proceeds of which were devoted to the construction of the main and branch lines respectively. The construction accounts were separately kept. The main line of the St. Joseph & Iowa Railroad Company and its branch were constructed with the proceeds of the subscription to the capital stock of that company, and of the bonds secured by the mortgage of April 1, 1872. About sixty-five miles of what had been the St. Joseph & Iowa Railroad were graded in 1872 and prior to the execution of this mortgage. Subsequently in the same year the construction of about forty-three miles of this road was completed. At that point, which was June 2, 1873, the financial agent of the company failed, and it thereby became embarrassed. A financial panic ensued immediately after. The railroad not being in a completed state had no sufficient earning capacity, and was unable to procure the necessary funds to complete its road and to pay its maturing interest. Proceedings were thereupon insti-

tuted in the proper United States Circuit Courts for the foreclosure of the respective mortgages. The property was placed in the hands of a receiver, who, under the orders of the Court, completed the construction of the Linneus branch. The funds necessary for this completion were advanced by the holders of the bonds. In November, 1880, in pursuance to decrees which had been entered in 1876 in the foreclosure proceedings, all the property covered by the mortgages was sold by a Special Master. The decrees contemplated a purchase on behalf of the bondholders and for their reorganization. In view of this provision, Elijah Smith, as trustee for the bondholders, became the purchaser at each of the sales, and the proper deeds were made to him as such, which were confirmed by proper orders of the respective courts. Subsequently these reorganizations were perfected. The reorganization in Missouri was participated in solely by the holders of the bonds on that part of the line which was formerly called the St. Joseph & Iowa Railroad Company and its branch. The reorganization in Iowa was composed solely of the bondholders of the Burlington & Southwestern Railway Company in that State. Each formed a new corporation, and subsequently by virtue of proper statutory authority, these two companies consolidated, and this plaintiff in error is the fruit of this consolidation. On the 27th of February, 1882, Elijah Smith, trustee, made a proper deed conveying the entire line in Missouri "with all the property,

rights, privileges, and franchises belonging or appertaining thereto." The articles of association of this plaintiff in error provide for the operation and maintenance of the Burlington & Southwestern Railway Company from Burlington, Iowa, to the Missouri state line, at which point that road connects with the main line of what was formerly called the St. Joseph & Iowa Railroad, and also of the branch of that road on the line projected by the resolution of March 25, 1871.

In the trial court the defendant asked the following declarations of law :

"*First.* The charter of the St. Joseph & Iowa Railroad Company, read in evidence, exempts the capital stock of said company from the payment of all State and County taxes. If, therefore, the Court finds from the evidence that the defendant company has succeeded to the corporate rights, privileges and franchises of the said St. Joseph and Iowa Railroad running through Putnam county, then the taxes levied by the County Court of said County against the defendant for State and County purposes for the years sued for, were levied without authority of law and contrary to the said charter exemption, and the finding and judgment must be for defendant. Provided, the Court further finds from the evidence and the pleadings and the admissions of plaintiff that all other taxes sued for and levied for the years 1882 and 1883, have been paid.

"*Second.* The Court further declares the law to be that by and under the charter and conveyances and assignments and transfers, read in evidence by the defendant, the rights, privileges and immunities conferred by the charter of the St. Joseph and Iowa Railroad Company, have been vested in the defendant company as to its line of railroad

through said Putnam county, and that under said charter and the rights, privileges and immunities thereby conferred, and to which the defendant has succeeded, the defendant is exempt from the payment of State and county taxes in said county."

Printed Rec. 115-116.

The Court gave the first of these, and refused to give the second one. The proper exceptions were saved to such refusal. The finding was for the defendant in error. An appeal was taken in proper form under the Missouri Practice Act to the Supreme Court of that State. There the judgment of the trial court was affirmed, and from this judgment of affirmance this writ of error is prosecuted.

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns the following errors in the proceedings leading to the judgment to which this writ of error is prosecuted:

1. The provisions of the charter of the St. Joseph & Iowa Railroad Company constitute a contract between that company and the State of Missouri. Notwithstanding the provision for exemption from taxation contained in this charter, the authorities of the State of Missouri have undertaken to levy taxes upon the property which came into being pursuant to that charter, and which is protected by its terms. This action is based upon the construction which these authorities place upon the Act of the General Assembly "To aid the building of Branch Railroads," approved March 21, 1868, and the second section of the Act of March 24, 1870, under which the contract of May 23, 1871, between the St. Joseph & Iowa Railroad Company and the Burlington & Southwestern Railway Company was entered into. By this construction of these statutory provisions the obligations of the contract between the St. Joseph & Iowa Railroad Company and the State of Missouri are impaired, and the exemption from taxation contained in that contract is completely destroyed. The State courts fully recognize the validity of this contract, but sanction its impairment by justifying the con-

struction put upon the acts of 1868 and 1870, by the taxing officers of the State, thereby violating the provisions of Section 10, of Article 1, of the Constitution of the United States, which provides that "no State shall pass any law impairing the obligation of contracts."

2. The construction and ruling of the Supreme Court of Missouri, as above set forth, is also violative of the terms and provisions of Section 1 of the fourteenth amendment of the constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

3. By the provisions of its charter, the St. Joseph & Iowa Railroad Company had authority "to pledge its road, rolling stock, machinery, depots, and any other property they may possess, together with franchise of said road." In pursuance of this authority, the successor of the St. Joseph & Iowa Railroad Company pledged the property it had acquired from that company, including its franchise and the privilege appertaining thereto, of exemption from taxation. The plaintiff in error is now the owner of the subject of that pledge. The ruling of the Supreme Court of Missouri impairs both the obligation of that contract embodied in the charter of the St. Joseph & Iowa Railroad Company, and that secured by the mortgage executed by the successor of that company, in violation of section 10, article 1, of the constitution of the United States aforesaid.

BRIEF.

I.

The defendant, by virtue of the successive conveyances and assignments in evidence, is the owner of, and in possession and control of all the rights, privileges, franchises and immunities of the St. Joseph and Iowa Railroad Company.

State ex rel., St. Jo. & Ia. R. R. Co. v. *Sullivan County*, 51 Mo., 522.
Cooper v. *Sullivan Co.*, 65 Mo., 542.
Hovelman v. *Kansas City Horse R. R. Co.*, 79 Mo., 632

II.

The General Assembly had full power and authority to grant the exemption from State and county taxes, as an inducement to secure the construction of a railroad. The exemption of the "stock" of the company covered all of its property used in connection with the railroads operated by it.

Shacklett v. *H. & St. Jo. R. R.*, 30 Mo., 550.
State v. *H. & St. Jo.*, 37 Mo. 265.
City of St. Joseph v. *H. & St. Jo. R. R.*, 39 Mo., 476.
Livingston Co. v. *H. & St. Jo. R. R.*, 60 Mo., 518.
Mechanics Bk. v. *Kansas City*, 73, Mo., 555.

The General Assembly expressly recognized the exemption of the Hannibal and St. Joseph Railroad Company from the payment of State and county taxes by section 3 of the act of September 20, 1852 (Acts 1852, p. 15), by requiring payment of an amount equivalent to the tax for State purposes, in consideration of the land grant to said company.

And in the act to amend the act to incorporate the St. Joseph & Iowa Railroad Company, approved March 19, 1866, the General Assembly in the broadest terms reiterates that the said Company should have "all the rights, privileges and immunities that belong to or are vested by virtue of the act to which this act is amendatory." The act of 1866 repealed the fourth section of the act of 1857. The Company consented to such repeal as a consideration clause of this supplemental contract. The fourth section of the act of 1857 provided that said company "shall receive such tolls and freights as may be determined on by the directors." It surrendered this exemption from legislative control in the matter of tolls and freights to be charged by it in consideration of the extension of time given by the Legislature for the completion of said road and the continuance of the rights, privileges and immunities which it had had under the act of 1857. A perusal of the act of 1857 will disclose that it contained but two privileges which might be said to be of any value, in addition to what was held out by the provisions of the general law governing the formation of railroad companies. The one was the

right to fix its own freight rates and tolls, the other its exemption from taxation. One of these (the former) the company yielded, and in return the Legislature, in language of the clearest import, declared that the other should belong to and be vested in said company.

III.

The General Assembly had full power to enact special laws and grant special privileges and immunities, by reference to other acts.

Morton v. *H. & St. Jo. R. R. Co.*, 20 Mo. 69.
H. & St. Jo. R. R. Co. v. *Morton*, 27 Mo. 317.
H. & St. Jo. R. R. Co. v. *Rowland*, 29 Mo. 338.
Shacklett v. *H. & St. Jo. R. R. Co.*, 30 Mo. 550.
H. & St. Jo. R. R. Co. v. *Marion Co.*, 36 Mo. 295.
State v. *H. & St. Jo. R. R. Co.*, 37 Mo. 265.
St. Joseph v. *H. & St. Jo. R. R. Co.*, 29 Mo. 476.
State ex rel. St. Jo. & Ia. R. R. Co. v. *Sullivan Co.*, 51 Mo. 522.
Smith et al. v. *Clark Co.*, 54 Mo. 67.
Cooper et al. v. *Sullivan Co. et al.*, 65 Mo. 542.

In *Humphreys* v. *Pegues*, 16 Wall. 244, the question is directly passed upon. In this case the charter of the Cheraw and Darlington Railroad Company was amended, as follows:

"That all the powers, rights and privileges granted by the charter of the Northeastern Railroad Company are hereby granted to the Cheraw and Darlington Railway Company, and subject to the conditions therein contained."

Mr. Justice HUNT, all concurring, says:

"The case shows that from 1849 to 1863 no sufficient inducements had been found to procure the building of the Cheraw road. We are not advised what other powers and privileges were then and there conferred upon it in addition to the exemption we are considering. But this exemption was conferred; an exemption that must have been understood by the least reflecting person as being of immense value to all concerned in the road."

In *Branch* v. *Jessup*, 106 U. S. 477, Mr. Justice BRADLEY says:

"The powers given in this charter by adoption and reference to the charter of the Savannah and Albany Railroad Company, consisted, as expressed in the charter of the latter company, of all the rights, privileges and immunities, which by the laws of Georgia were held or enjoyed by any incorporated railroad company or companies in the State."

IV.

The amendment of the charter of the St. Joseph & Iowa Railroad Company of March 19, 1866, having been acted under and thus accepted by the St. Joseph & Iowa Railroad Company, was a valid exercise of legislative power, and so far as the question at bar is concerned, was not affected by the adoption of the Constitution of Missouri in 1865. This is the uniform line of decision in this Court and of the Supreme Court of Missouri in kindred cases.

State ex rel. v. *Cape Girardeau, etc., R. R.*, 48 Mo., 470.

State ex rel. St. Joseph & Iowa R. R. v. *Sullivan Co.*, 51 Mo., 522.

Cooper et al. v. *Sullivan Co. et al.*, 65 Mo., 542.
Scotland Co. v. *M. I. & N. R. R.*, 65 Mo., 135.

V.

The St. Joseph and Iowa Railroad Company had authority to build branches from any point on its line.

State ex rel. St. Joseph and Iowa R. R. Co. v. *Sullivan Co.*, 51 Mo., 522.
Cooper et al. v. *Sullivan Co.*, 65 Mo., 542.
Atlantic and Pacific R. R. Co. v. *St. Louis*, 66 Mo., 228.
Mechanics Bank v. *Kansas City*, 73 Mo., 555.

VI.

The question presented under the 3d, 4th and 5th subdivisions have been directly and in terms fully passed on by the Supreme Court of Missouri in the case of *State ex. rel. St. Joseph & Iowa Railroad Company* v. *Sullivan County*, 51 Mo. 522. The defendant county was compelled to issue two hundred thousand dollars of bonds in payment of the subscription made by it under the charter of 1857, for the purpose of aiding the construction of the Central North Missouri Branch of the St. Joseph & Iowa Railroad Company, which had been projected and established by the resolution of March 25, 1871. The Court (WAGNER, Judge) fully recognizes that by the references to the charter of the Hannibal & St. Joseph, and Louisiana and Columbia Railroad Company, the provisions of those charters were fully embodied in and made a part of the

charter of the St. Joseph & Iowa Railroad Company. After quoting the language of the charter of the Louisiana & Columbia Railroad Company with reference to its power to build branches, the Court said, "It (the charter of the St. Joseph & Iowa Railroad Company) also gives that company full power to make such branches as it might deem necessary or the public convenience require (51 Mo. 529-531)." In *Cooper* v. *Sullivan County*, 65 Mo. 542, the same question was again presented. The former ruling was fully adhered to, the Court, per NAPTON, J., saying:

"The subscription of May 1, 1871, on the part of Sullivan county, to the St. Jo. and I. R. R. Co. for a branch of said road, which was transferred to the Burlington and Southwestern R. R. Co. was held to be binding on the county; and it was also necessarily decided that the charter of the St. Jo. and I. R. R. Co. of 1857, had not been forfeited by non-user or otherwise."

It will be perceived that in both these cases the Supreme Court of Missouri fully recognized the transfer of the St. Joseph & Iowa Railroad Company, with all the rights, privileges and immunities under its charter, and indeed all its charter itself, to the Burlington and Southwestern Railway Company. Not only was no question made of the validity of this transfer, but it was regarded as passing without exception everything that the act of 1866 left of the original charter of 1857. Similar views were applied in the case of *State ex rel Attorney-general* v. *Greene County*, 54 Mo., 540. It

is true, that the ruling in this last named case is not now adhered to by the Supreme Court of Missouri, and in its retraction the explanation for the ruling in the case at bar in the light of the previous case under the same charter is to be found. The course of decisions of the Supreme Court of Missouri under the various special charters granted to railroad companies, has been very often and quite prominently brought to the attention of this Court in recent years. In *State ex rel Attorney-general* v. *Greene County, supra*, the County Court of Greene County was in fact compelled to issue certain bonds in payment of the subscription to the branch of the Kansas City and Cameron Railroad, which had consolidated with the Hannibal & St. Joe Railroad. The power to build branches given in the charter of the last named company was held to authorize the subscription of the bonds in question, upon the authority of *State ex rel. St. Joseph & Iowa Railroad Company* v. *Sullivan County*, 51 Mo., 522. Subsequently the Supreme Court of Missouri overruled the Greene county case, and held these bonds to be void (*State* v. *Garroutte*, 67 Mo., 445; *State* v. *Dallas County*, 72 Mo., 329). This Court has repeatedly examined the grounds upon which the last named cases proceeded, and has declined to recognize their correctness. *Greene County* v. *Conness*, 109 U. S., 104, and cases cited. The same line of argument on which the Garroutte case is based was applied by the Supreme Court of Missouri in this case, when it held that the branch line projected by the

St. Joseph & Iowa Railroad Company under the resolution of March 25, 1871, was, by force of the branch aid act of March 21, 1868, practically a separate and independent railroad. This act of 1868 will be found on examination to confer no new power to build branch lines, for, by the terms of its first section it applies only to "railroad companies in this State authorized by law to build branches." Under the general railroad law of Missouri there was no authority in a railroad company organized under it to build branches. This power had been conferred only upon individual companies by special charters as in the case of the St. Joseph & Iowa Railroad Company; and as a rule these were silent as to the mode of the exercise of that power, and the manifest object of the Act of 1868 was to supply this lacking element. Undoubtedly a branch railroad had an owner. It is equally clear that the act of 1868 did not bring into being a new corporation which would be such owner. Nor is there anything in the act of 1868 about excluding what must be a self-evident proposition, that a branch line belonged to the company which projected and constructed it, and of whose main line it was intended to be an appendage and part. It is true that the act of 1868 contains provisions governing the matter of keeping accounts and the application of the proceeds of stock subscriptions to each part of the railroad separately, but the stock to which these subscriptions were to be made was the stock of the company under its charter. It is upon this ground,

and this alone, that the bonds issued by the various counties in Missouri, whose validity was sustained by the long line of cases referred to in *Greene County* v. *Conness*, rest. And this is made manifest by the fourth section of the act of 1868, which gives to the holders of stock issued on subscription to aid in the construction of the branch lines "the same rights as other stockholders in the choice of officers" of the parent company. But one set of officers is provided for. These are the officers of the parent company, and their authority is to be found in the charter of that company. This fixes the ownership of the branch line in the parent company.

Pullman Car Company v. *Railway Company*,
115 U. S., 587–597.

Being a part and parcel of the property of the St. Joseph & Iowa Railroad Company, under the terms of the act of 1857, which exempted the property of that company (not a part, but all of it) from taxation, it stood on the same basis as all other property of that company. Such a construction is quite in accord with the legislative intention, for the act of 1857, in conferring the power to build branch lines, manifestly contemplated the exercise of that power. The absence of the provision in that act that such branch-line property should stand upon a basis different from the main line of the company, should be conclusive of the question.

Atlantic & Pacific Railroad v. *St. Louis*, 66 Mo., 228,

The well settled law of this subject is very concisely stated in *Mechanics Bank* v. *Kansas City*, 73 Mo., 555. In 1857 the General Assembly passed a law concerning banks and banking institutions. Provision was there made for the establishment of banks, and section 32, article 1, prescribed the amount to be paid as taxes. (Acts 1856-7, pp. 14, 22.) A subsequent statute declared that the amount so provided should be in full of all taxes of every kind whatever. (Acts 1860-61, p. 13, § 12.) Article 2 of the acts of 1857 provided for the establishment of branch banks. (Pp. 24, 25.) The attention of the Court is particularly and earnestly called to this article, in the light of the theory that a "divorce" in the matter of the regulation of business, or the rights of stockholders, puts a branch institution (and it is, of course, immaterial whether it be one of a bank or of a railroad,) upon any different basis, with reference to an exemption from taxation, than its parent occupies. Under the act of 1857, a specified portion of the capital of the parent bank was required to be set aside and applied to branches, and to be placed for subscription for that purpose. When the requisite amount of capital for a branch was subscribed, the parent bank was notified and a time fixed for the election of a separate board of directors for the branch. Five of these (a majority) were elected by the subscribers to the branch bank, and the other four by the parent bank. These

nine directors were required to elect the officers and organize the branch and to manage its business. (§§ 1, 2, p. 24.) The Mechanics Bank established a branch at Kansas City, and taxes having been levied upon the property of this branch, the question of their validity arose. The Court quoted section 32 of the act of 1857 and section 12 of the act of 1861, above referred to, and said: "The language of the above provisions is perfectly free from ambiguity, and constitutes and creates a contract between the State and the plaintiff bank (which was the parent bank), in effect exempting plaintiff from all liability to pay any other tax than as provided in the sections referred to." It would be difficult to frame a more complete separation than that prescribed in the act of 1857, between parent and branch banks. The stock of the latter was separately subscribed; a distinct and independent board of directors was elected in a mode other than that provided for the election of directors of the parent bank; and, what would be most decisive, if the theory of an independent existence of a branch be recognized at all, this board of directors of the branch bank controlled and managed its affairs. Every ground assigned in the pending case for the conclusion reached, exists in the bank act; added to which is the controlling one that the absolute management of the branch bank as a separate institution, doing business at another place, is committed to a board beyond and free from the control of the parent bank. No express provision of

law exempted branch banks from taxation, nor do the sections referred to in terms apply to such branches. Yet the Court, treating the branches as a part of the parent bank, held their property entitled to the same exemption. The law is stated to be thus settled, and no room for doubt is perceived. It needs but a casual comparison of the bank acts with the branch railroad acts of 1868, to show that much more reason exists for holding a legislative "divorce," or rather emancipation, from the parent bank under the former, than one from a railroad company in the latter case. Under the bank acts, the subscribers to the stock of the branch controlled it absolutely, and had no voice in the management of the parent bank. Under the railroad legislation, the vote in the management of the parent road was expressly given the same class of subscribers. (Section 4, act 1868.) If the considerations urged by the Court in this case are important, the bank case can not be sustained. The language and tone of the opinion in the latter case plainly indicate the conviction of the Court that it was declaring well-settled law. (73 Mo., 555, 558.) So, too, the relief in that case was adjudged to, and on application of the parent bank, and it was regarded as the owner of the property of the branch bank, and this property as entitled to the same exemption from taxation that the other property of the main bank had.

The Court there also announced in pointed terms, the character of such an exemption, and the want of power in the legislature (where the

right to do so is not reserved) to modify, change or repeal it, and the like want of authority in the Court to vary or impair it, as abundantly and clearly settled. The lucid language of Mr. Justice DAVIS was approvingly quoted: "If the contract exempting a corporation from taxation is plain and unambiguous, and the meaning of the parties to it can be clearly ascertained, it is the duty of the Court to give effect to it, the same as if it were a contract between private persons, without regard to its supposed injurious effects upon the public interests." (73 Mo., 559.)

Here the privilege is granted in the language indicated. All the property of the St. Joseph and Iowa R. R. Co. is exempted. Hence, the inquiry is narrowed down to the consideration whether such a branch is the property of that company. The act of 1857 conferred power to build branches, and these branches, it was manifestly regarded, would be a part of its property. As such, they are exempt. The act of 1868 did not introduce a different rule in this respect. It conferred no new power to build branches, for in terms that act is applicable only to such companies as previously had the power to build branches. It then proceeds to describe the mode of executing this power. Nothing more. The title to the branch when built is still to remain as a portion of the property of the parent company. If any different or special provisions for its management are prescribed, they are mere regulations of the business affairs of the com-

pany, and these regulations apply to both main and branch lines. The legislative intent to exempt branches of the St. Joseph and Iowa R. R. Co. is as plain and unambiguous as a similar intention to exempt the main line. It was contemplated that the road should consist of both main line and branches. The act of 1868 did not, if it could have done so, impair the exemption previously granted. Certain it is that it exacted no surrender of the privilege. That was not one of the conditions prescribed to obtain the benefits of that act. The St. Joseph and Iowa R. R. Co., when it built a branch line, exercised a power and obtained a property authorized by the act of 1857—its charter. It looked to the act of 1868 only as a mode for executing that power. The questions arising in the bond cases are identically the same. The act of 1868 gave no power to county courts to subscribe bonds. That power was found in the act of 1857. The act of 1868 merely furnished the mode of exercising the power to subscribe. But the bonds were not for that reason void. On the contrary, the act of 1857 was looked to as indissolubly linked to the act of 1868, and they were regarded as relating to one and the same matter. The former as providing the corporation and a power to subscribe, and the latter providing for the branch, in aid of which stock in the parent and only company was to be subscribed.

VIII.

It is apparent from the course of legislation of the State of Missouri from 1868 to 1872, that the sentiment of the State was strongly in favor of encouraging the construction of railroads and of providing facilities to that end. In this spirit the General Assembly passed the Act of 1870, which confers both facilities and inducements to local companies to continue the work of constructing their lines, and to foreign companies to come into this State with their railroads. The second section undertakes to provide means for the union of a foreign company, whose railroad might reach the line of the State of Missouri, with the railroad of a Missouri company, whose line would make a continuous one, if joined to such foreign line, to some of the commercial centers of the East. Acting under this inducement and under the terms of the second section, the St. Joseph & Iowa Railroad Company entered into the contract of May 23, 1871, with the Burlington & Southwestern Railway Company. The contention of the State and the ruling of the Supreme Court of Missouri in this case, is that by entering into this contract the exemption from taxation granted in the original charter of the former company was surrendered. Whether this ruling is correct is the vital question in this case. The section in question consists of a number of provisions, each of which could well have been an independent provision. This will be made clear by

separating the several sentences and presenting each by itself:

(*a*) SEC. 2. Any railroad company heretofore incorporated or hereafter organized in pursuance of law, may at any time, by means of subscription to the capital stock of any other railroad company, or otherwise aid such company in the construction of its railroad within or without the State, for the purpose of forming a connection of the last mentioned road with the road owned by the company furnishing such aid;

(*b*) Or any such railroad company which may have built its road to the boundary line of the State, may extend into the adjoining State, and for that purpose may build or buy or lease a railroad in such adjoining State and operate the same, and may own such real estate and other property in such adjoining State as may be convenient in operating such road:

(*c*) Or any railroad company organized in pursuance of the laws of this or any other State or of the United States, may lease or purchase all or any part of a railroad, with all its privileges, rights, franchises, real estate and other property, the whole or a part of which is in this State, and constructed, owned, or leased by any other company, if the lines of the said road or roads of said companies are continuous or connected at a point either within or without this State, upon such terms as may be agreed upon between said companies respectively;

(*d*) Or any railroad company, duly incorporated and existing under the laws of an adjoining State of the United States. may extend, construct, maintain and operate its railroad into and through this State, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this State upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and provisions of the laws of this State concerning railroad corporations as fully as if incorporated in this State;

(*e*) Provided, that no such aid shall be furnished, nor any purchase, lease, sub-letting, or arrangements perfected until a meeting of the stockholders of said company or companies of this State, party or parties to such agreement, whereby a railroad in this State may be aided, purchased, leased, sublet, or affected by such arrangement, shall have been called by the directors thereof, at such time and place, and in such manner as they shall designate, and the holders of a majority of the stock of such company, in person or by proxy, shall have assented thereto, or until the holders of a majority of the stock of such company shall have assented thereto in writing, and a certificate thereof signed by the president and secretary of said company or companies, shall have been filed in the office of the Secretary of State;

(*f*) And provided, further, that if a railroad company of another State shall lease a railroad,

the whole or a part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its railroad into this State or through this State, such part of said railroad as is within this State shall be subject to taxation, and shall be subject to all regulations and provisions of law governing railroads in this State; and a corporation in this State leasing its road to a corporation of another State shall remain liable as if it operated the road itself; and a corporation of another State being the lessee of a railroad in this State, shall likewise be held liable for the violation of any of the laws of this State, and may sue and be sued, in all cases and for the same causes, and in the same manner as a corporation of this State might sue or be sued if operating its own road; but a satisfaction of any claim or judgment by either of said corporations shall discharge the other; and a corporation of another State being the lessee as aforesaid, or extending its railroad as aforesaid, into or through this State, shall establish and maintain an office or offices in this State, at some point or points on the line of the road so leased or constructed and operated, at which legal process and notice may be served as upon railroad corporations of this State."

Some of the provisions of this clause have application to local companies alone, others to foreign companies alone, and some of them apply to both classes of companies alike. The material question is whether the provision in subdivision "f" "such

part of said railroad as is within this state shall be subject to taxation" applies in the case of a SALE by a home company of its property and franchies to a foreign company, Subdivisions "a" and "b" confer a power solely on home companies. Subdivision "c" confers power on a railroad company organized in pursuance with the laws of this or any other State, or of the United States, to "lease or purchase all or any part of a railroad with all its privileges, rights, franchise, real estate and other property, the whole or part of which is in this State," owned by another company, if the two roads form a continuous line "upon such terms as may be agreed upon between such companies respectively." There is no question that this language is broad enough to include the exemption from taxation. One company might purchase another "with all of its privileges," and this includes the exemption.

Tennessee v. *Whitworth*, 117 U. S., 139 and 145.

Subdivision "d" authorizes railroad companies incorporated under the laws of an adjoining State to extend, construct, maintain, and operate its railroad into this State, and subdivision "e" provides that no "purchase, lease, subletting or arrangement shall be perfected" until the holders of a majority of the stock of the home company shall assent thereto.

In the light of this dissection of the statute it will be found that subdivision "f" has reference olely and alone to the case of a foreign corpora-

tion which shall lease or make arrangements to operate a railroad in this State, or extend its own road into it under subdivision "d." And it is to such a case that the declaration that such part of "said railroad (i. e. of such foreign company so leasing or arranging to operate, or extending its own line into the State) shall be subject to taxation," is directed. The legislature had in mind that a railroad might be acquired in this State by virtue of this act by lease or purchase, or that arrangements might be made to operate it either by sub-letting or by any other means which might be agreed upon between the companies. For it uses all these terms repeatedly in the several clauses of this section, except that in the last clause (subdivision "f") the use of the word "purchase" is studiously avoided. The terms "lease" and "purchase" have a technical meaning, in which sense the legislature must be presumed to have used them. So the term "make arrangements for operating" has a definite meaning when used in speaking of railroads. It does not imply ownership, nor does it carry with it the idea that the foundation of such an arrangement shall be a purchase on the one hand and a sale on the other. It is very clear that the object of this subdivision "f" was that the *statu quo* should be maintained.

The Burlington and Southwestern Railway Company did not extend its railway into this State within the meaning of said provision of the statute. Under the contract of May 23, 1871, under the name

Burlington and Southwestern Railway Company, part of the main line of said St. Joseph and Iowa Railroad and said branch thereof were constructed under the charter of said company, but not under the charter of the Burlington and Southwestern Railway Company. And thus it is that the part of the road sought to be subjected to State and county taxes in this case does not come within the proviso of the statute under review, and a careful analysis of the whole section will disclose the fact that it was not intended to be embraced therein.

There is no inconsistency in the section; the provision relating to taxation of foreign companies applies only to foreign companies distinctively, and it is merely a proviso against the importation of privileges from adjoining States, such legislation being necessary to secure control. "A corporation dwells in the place of its creation, but may do business wherever its charter allows and local laws do not forbid." *Canada Southern R. R. Co.* v. *Gebhard*, 109 U. S., 527; Morawetz Private Corporations, Secs. 505, 512. In Story's Conflict of Laws, 36. 37, it is said: "In the silence of any positive rule, affirming or denying, or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless they are repugnant to its policy or prejudicial to its interests. It is not the comity of the courts, but the comity of the nation which is administered, and ascertained in the same way, and guided by the same reasoning, by which all other principles of

municipal law are ascertained and guided." "Corporations of foreign States have all powers of similar corporations of the State unless restricted." *Bank of Augusta* v. *Earle*, 13 Peters, 592; *Cowell* v. *Springs Co.*, 100 U. S. 55; *Christian Union* v. *Yount*, 101 U. S., 383. In this last case is said: "If the policy of the state or territory does not permit the business of the foreign corporation in its limits, or allow the corporation to acquire or hold real property, it must be expressed in some affirmative way." It is therefore apparent that the General Assembly had in mind the foreign corporate entity, and control of property of such corporation. If it leased a railroad it assumed its liabilities and privileges; and, on the other hand, if it built its road into the State, it was subject to the general law touching railroads. The case of *Scotland Co.* v. *M. I. & N. R. Co.*, 65 Mo., 125, decides this question. Section 2 of the act of 1870 *supra*, was the only authority for roads of this State and adjoining states to consoldidate. It was agreed in that case that the act had been complied with, but of course the legal effect could not be agreed away. The Court held the exemption maintained. *Tennessee* v. *Whitworth*, 117 U. S., 139, is to the same effect. The record in this case shows that there was no building into this State by a foreign corporation. The line in Missouri was built with money derived from stock and bonds of the Missouri line, and was to all intents and purposes a Missouri institution. Suppose the name had been continued, "St. Joseph and Iowa

Railroad Company." It would have made no difference, for the question is to be determined by the intention and effect. Exemption from taxation is a privilege, a property right; when clearly conferred it is as much the property of the corporation as its roadbed. A railroad or other business venture is more or less profitable according to its earnings, capacity and expense of operation. A railroad company with exemption from taxation, would, perforce, have as much more money annually as the taxes would amount to. It would be as idle an argument to say that a twenty-dollar gold piece was a thing of value, as to elaborate the value of tax exemption. In *Phila., Wil. & Balt. R. R.*, v. Reid, 10 Howard, 394, it was held that a merger by consolidation, of property rights and privileges, carried exemption from taxation. That idea is reiterated in

Tomlinson v. *Branch*, 15 Wall. 460.
Humphreys v. *Pegues*, 16 Wall, 244.
Central R. R. & Bk. Co., v. *Georgia*, 92 U. S., 665.
Branch v. *City of Charleston*, 92 U. S., 77.
Paine v. *L. E. & L. R. R.*, 31 Ind., 349.
Sly v. *Penn. Cent. R. R.*, 65 Pa. St., 209.

Would not investors prefer to purchase bonds secured upon property maintained at a minimum expense? It is reasonable to believe that the parties in interest in the case at bar, in looking over the long array of authorities upon this subject, were influenced thereby. We do not believe that

a statute that provides for aiding, purchase, lease, sub-letting, or arrangement, undoubtedly intended to be prolific in inducements to secure railroad facilities, intended or does extinguish the most valuable attributes. The charter must be looked at in the light of the days of its creation and organization. Inducements to build railroads were a necessity, and were bountifully bestowed upon different companies. The desire to secure control of the railroads of the State must be gratified only by proper means.

As said in *Wilmington Railroad* v. *Reid:* "If the contract exempting a corporation from taxation is plain and unambiguous, and the meaning of the parties to it can be clearly ascertained, it is the duty of the Court to give effect to it the same as if it were a contract between private persons, without regard to its supposed injurious effects upon the public interests." (13 Wall., 266.)

VIII.

The right to build a railway with its rights, privileges, franchises and immunities, is property, and the subject of contract, mortgage and sale.

Galveston R. R. Co. v. *Cowdrey*, 11 Wall., 480.
Daniel v. *St. L., K. C. & N. Ry. Co.*, 62 Mo., 43.
Atlantic & Pacific R. R. v. *St. Louis*, 66 Mo., 228.
Hovelman v. *Kan. City Horse R. R. Co.*, 79 Mo., 632.

The company had full power to execute the mortgage in this case. Section 3 act to amend the charter of the St. Joseph and Iowa Railroad Company, approved Nov. 5, 1857, is as follows:

"SEC. 3. For the purpose of further enabling said company to construct, equip, and operate said road, they are hereby authorized to pledge the said road, rolling stock, machinery, depots, depot-houses and any other property they may possess, *together with the franchise of said road*, for the liquidation of any indebtedness said railroad company may incur in the construction of said road." Printed Rec. P. 28

A corporation with full power to mortgage can as effectually convey its property, rights, privileges, corporate entity and franchise, as a private individual can his property and rights, and subsequent legislation, unless provided for, can not affect the transfer, as the very security guaranteed would be imperiled.

Daniels v. *St. L. K. C. & N. Ry. Co.*, 62 Mo., 43.
Hovelman v. *Kan. City Horse R. Co.*, 79 Mo., 632.
Knoxville & Ohio River R. R. v. *Hicks*, 1 Tenn. Legal Rep., 335.
Detroit v. *Mutual Gas Light Co.*, 43 Mich., 597.

It will be observed that "for the purpose of enabling said company to construct, equip and operate said road," the company was authorized to pledge it and the property, "together with the FRANCHISE of said road," etc.

In none of the entire list of adjudicated cases is the authority to mortgage the corporate entity, the

individuality of the corporation, so clearly and unequivocally given as by the term, "the franchise."

In *Railroad Company* v. *Georgia*, 98 U. S. 365, says Mr. Justice STRONG, all concurring: "It is quite too narrow a definition of the word "franchise," used in this statute, to hold it as meaning only the right to be a corporation. The word is generic, covering all the rights granted by the legislature. As the greater power includes every less power which is a part of it, the right to withdraw a franchise must authorize a withdrawal of every or any right or privilege which is a part of the franchise." *Ergo*, the right to mortgage "the franchise," carries with it all the rights, privileges and immunities. "The right of being and acting as a corporation is a franchise granted by the sovereign power. The body thus created has an identity distinct from that of the individual corporators; and its property, rights and liabilities are distinct from theirs." Pierce on Railroads, 1.

"A franchise is a right or privilege conferred by law. When the legislature incorporates an association, it confers upon the association the privilege or franchise of acting within certain limits in a corporate capacity. The franchise so conferred makes shareholders corporators; it attaches to each share of stock, and passes by assignment to every successive shareholder."

Morawetz on Corporations, section 535.

"Power to mortgage or sell the franchise to form a corporation and act in a corporate capacity, means power to charter a new corporation by appointing the corporators."

Morawetz on Corporations, section 542.
State ex rel. v. *Sherman*, 22 Ohio St., 428.
Arthur v. *Commercial Bk.*, 9 Sm. & M., 394.

"The corporate entity or body, and its corporate franchises, are very different things. The one is the being, the others are attributes and possessions thereof. All the functions of a railroad (or other) corporation are holden to be franchises, and they in their aggregate, as attributes of such corporation, compose the franchise of the company."

Rorer on Railroads, Sec. 72.

"Though technically speaking, a railroad or or other corporation can not alienate or mortgage (by which it may be liable to be alienated) its franchise to be a corporation, that is, its corporate entity as a whole or in part, yet when authorized by legislative authority to do so, either express or clearly implied, it may alienate absolutely or mortgage the same at pleasure."

Rorer on Railroads, Vol. 1, Sec. 247.
East Boston Freight R. R. v. *Eastern R. R. Co.*, 13 Allen, 422.
Hatcher v. *T. W. W. R. R.*, 62 Ill., 477.

"A corporation is a franchise possessed by one or more individuals, who subsist, as a body politic, under a special denomination, and are vested, by the policy of the law, with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual."

Kent's Com., 13th edition, top page 268.
Shacklett v. *Hannibal & St. Jo. R. R.*, 30 Mo., 550.

Our theory is exactly in line with the decisions of this Court in the cases of

Morgan v. *Louisiana*, 93 U. S., p. 223.
Railroad Co. v. *Maine*, 96 U. S., 499.
L. & N. R. R. Co. v. *Palmes*, 109 U. S., 244.

In those cases there was either no right to convey the immunity, or it was sought to be voluntarily done in the face of statutory or constitutional inhibitions.

In the recent case of *Vicksburg, &c., R. R. Co.* v. *Dennis*, 23 Cent. L. J., 23, it is taken for granted that the reorganized company, by virtue of the mortgage, succeeded to the exemption.

The theory that the mortgage of 1872 could not and did not invest the grantee under it with the mortgagor's immunity from taxation, is based upon the previous contention that a branch road is a separate entity, and governed by special rules. This

position has already been noticed. The act of 1868 is not to be looked to alone for a decisive answer tothis question. The charter of 1857 furnishes the power. It may be conceded that the general term, "franchises" of a railroad, of itself, does not apply to exemption from taxation. But this rule can have no application, for such is not the language here. Counsel for the state urge that the corporation—the chartered entity, is the main thing, and that this can not sell itself. That the immunities and privileges which the charter confers upon it are but incidents. That consequently, they cannot pass unless the principal thing is authorized to be transferred. The converse necessarily follows, that if the principal thing can be set over, the others follow it as necessary incidents. Especial attention is asked to the peculiar language in the charter of the St. Joseph and Iowa R. R. Co., which granted the power to mortgage. This does not employ the terms to which *Morgan* v. *Louisiana* and kindred cases are applicable. Under the rulings of this Court, the language in the charter referred to, vested authority to transfer the very privilege in question. This language gives authority "to pledge the said road, rolling stock, machinery, depot houses, and any other property they may possess, together with the franchise of said road." (Acts 1857, p. 74, § 3.) Rinker Rep. 28.

A perusal of the charters of other railroad companies will disclose that this language is differ-

ent from that generally used in the material respect that here "the franchise of the road" is in terms authorized to be pledged, while there the plural word "franchises" of the particular company is used. The adjudications show that the phrases each have a distinct meaning. "Franchises" has the signification stated in *Morgan* v. *Louisiana;* but the phrase "franchise of the road" describes and includes the very right to exist as a corporation. It is the term employed to describe this right, and it carries with it all the privileges attached to the corporate creation. It includes all the rights given to the pledging or granting body. A comparison of *Morgan* v. *Louisiana* with the subsequent case of *Railroad Company* v. *Georgia*, makes our contention quite too plain for further argument. In the latter case the word "franchise" is declared to be "generic, covering all the rights granted by the legislature." (98 U. S., 365.) This is its settled meaning in this connection, and by employing it in the act of 1857, instead of the phrase found in the other railroad charters, the legislature must be conclusively presumed and held to have intended that it should be given its technical meaning. It is a term of art having a fixed meaning, and the circumstance that it was used in this charter can not be held pointless. On the contrary, if the legislative intent is to be effectuated, it must be construed and defined in accordance with *Railroad Company* v. *Georgia*. Any other construction does violence to the language of the legislature.

The power granted in the act of 1857 covers this exemption within the rule declared by the Supreme Court of Missouri in *Daniel* v. *Railway Co.*, 62 Mo., 43, and recognized in *Hovelman* v. *Railroad Co.*, 79 Mo., 632. The entire object to be attained by these grants of special privileges to railroad companies was the public benefit to accrue from their construction. The legislature intended to provide railroads for the people and to hold out sufficient inducements to capital to build them. It is a matter of general history that, in the light of the great expense attached to this construction, money must be raised by mortgage. The power to raise this money is given for the purpose of effectuating the object originaily in view. The same inducement held out to the corporation was intended to move the loaner to provide the means. To effectuate this intention the loaner must have the same rights as a security that the stockholders of the company have. Each is asked to invest money in a given enterprise on the faith of the granted rights; not on the faith of a part, but on the strength of *all* of them. The legislature did not intend that a certain company or the named persons alone should have this exemption, but that it should attach as an incident to the property and belong to the holder of the franchise. The stock is exempted. This stock is authorized to be transferred, and with the transfer of his stock, all connection of the holder with the company and its property ceases. No one has ever doubted that the

transferee of such stock was entitled the same exemption as the original subscriber. The stock represents the property, and upon this ground, it is conceded, that this property is exempt under the same provision. Upon what ground, then, hold that a transfer, in the manner and for the purposes authorized in the act of 1857, of the very thing that gives being to the stock, destroys the privilege and withdraws the inducement so solemnly held out by the State?

IX.

This destruction is the impairment of the obligation of a contract, and hence violative of the Federal Constitution. The original exemption was a valid and binding contract. It could not be annulled in terms by subsequent legislation. Nor can the same end be reached under the constitution of the United States by a construction placed upon such subsequent legislation by a Court. Whether the repeal be sought to be accomplished directly or by indirection, the effort must alike be held inhibited by the Federal Constitution.

Given v. *Wright*, 117 U. S., 648, 655, 656.
State Bank v. *Knoop*, 16 How., 369.
Home v. *Rowse*, 8 Wall., 437.
Wilmington R. R. Co. v. *Reid*, 13 Wall., 266.
Pacific R. R. Co. v. *Maguire*, 20 Wall., 36.
Farrington v. *Tennessee*, 95 U. S., 679.

Furman v. Nichol 8. wall. 55
Bridge Proprietors v. Hoboken. 1. wall. 141.

So, also, the construction placed upon these statutory provisions by the Supreme Court of Missouri not only abridges, but entirely destroys, the privilege aud immunity to which this plaintiff in error is entitled as the successor and owner of the the contract made between the State of Missouri and the St. Joseph & Iowa Railroad Company.

X.

The evidence offered in rebuttal by the defendant in error in the trial court and which that court neither admitted nor rejected, is totally irrelevant to the inquiry here. No part of the property in question came into being under any of the instruments or conveyances offered. The railroad at bar was constructed under the terms of the charter of the St. Joseph & Iowa Railroad Company and with the funds of that Company, and the right to do so was conferred upon the Burlington & Southwestern Railway Company under the contract of May 23, 1871. The oral testimony in the case shows very conclusively that the North Missouri Central Railroad was a bankrupt corporation, which had neither a railroad nor funds wherewith to build one. None of the property in question, the liability to taxation of which is involved in this case, is in anywise affected by the documentary evidence offered concerning the affairs, dealings and transfer of the North Missouri Central Railroad. The sole question here is whether the property of the St. Joseph

& Iowa Railroad Company is subject to taxation, and whether that exemption has passed to the present owner of that property.

Respectfully submitted,

L. T. HATFIELD,

A. W. MULLINS, AND

KARNES & KRAUTHOFF,

For Plaintiff in Error.

120-669

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NO. 1944.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

STATE OF MISSOURI EX REL. JOHN F. GUFFEY, COLLECTOR,
Defendant in Error,

vs.

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY COMPANY,
Plaintiff in Error.

Error to the Supreme Court of Missouri.

BRIEF FOR DEFENDANT IN ERROR.

JNO. P. BUTLER,
For the State.

B. G. BOONE,
Attorney General.

CHICAGO:
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1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1244.

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Defendant in Error.

vs.

CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY CO.,
Plaintiff in Error.

Error to the Supreme Court of Missouri.

STATEMENT OF THE CASE FOR THE DEFENDANT IN ERROR.

The defendant in error having had no opportunity to examine the statement of the case as made by the plaintiff in error, is unable to say whether the same be true or not, and hence deems it proper to submit the following facts, as disclosed in the record of this case.

The plaintiff in error secured its corporate existence by its articles of association, filed in the office of the Secretary of State, *January 12, 1882*, under and by virtue of the general laws, and subject to the limitations and restrictions of the Constitution of the State of Missouri, adopted in the year 1 75, and in virtue of the law of its creation subject to taxation.

Although immunity from taxation was excluded by

the organic and other laws, under which this corporation came into life and being, yet the contention of the plaintiff in error is, that it purchased exemption from State and county taxes, under a quit claim deed from Elijah Smith, dated *Feb'y 27, 1882.* (R. p. 85

This claim rests upon the following basis:

1. "An act to incorporate the Saint Joseph and Iowa Railroad Company, approved January 22, 1857, wherein there is a grant of corporate power to John Corby, Milton Tootle, Thomas Henry, Jonathan Levy, William K. Richardson, of Buc anan county; J. N. Shambaugh, of De Kalb county; Thomas Pannel, of Andrew county; John B. Hundley and George W. Lewis, of Gentry county; John D. Williams and Jno. P. Lutz, of Daviess county; M. K. Howell, of Harrison county; and John R. Clark, of Harrison county, or any nine of them, as the first Board of Directors."

This act further declares that said company "shall in all things be subject to the same restrictions, and be entitled to all the rights, privileges and immunities which were granted to the Hannibal and St. Joseph Railroad Company, by an act entitled, 'An act to incorporate the Hannibal and St. Joseph Railroad Company,' passed at the session of the General Assembly, and approved February 16, 1847; and also of the amendments to the charter of said company, passed at the sessions of the General Assembly, and approved February 23, 1853, and March 3, 1855, so far as the same are applicable to the company hereby created, and not inconsistent with the powers hereby conferred, as fully and completely as if the same were herein re-enacted." (Rec. p. 18)

Under this charter, there was no express grant of immunity from taxation, nor was there any authority given to said company to either mortgage or sell its property and franchises.

2. "An act to incorporate the Hannibal and Saint Joseph Railroad Company, approved February 16, 1847, as amended by the acts approved February 23, 1853, and March 3,

1855," were, by the before stated reference, made a part of the charter of the Saint Joseph and Iowa company.

In neither of these enumerated acts, incorporating the Hannibal and Saint Joseph company, was there any express grant of immunity from taxation, but section four of the act to incorporate the Hannibal and Saint Joseph company, approved February 16, 1847, provided that said company "shall in all things be subjected to the same restrictions, and entitled to all the privileges, rights and immunities which were granted to the Louisiana and Columbia Railroad Company," passed at the session of the General Assembly, in 1836 and '37, and approved January the 27, 1837, so far as the same are applicable to the company hereby created, as fully and completely as if the same were herein re-enacted."

(R. p. 20)

3. "An act to incorporate the Louisiana and Columbia Railroad, approved January 27, 1837."

This charter is quite lengthy and its provisions numerous, but under it the first Board of Directors are named, and they are empowered to fill all vacancies, until such time as one thousand shares have been subscribed, when all the powers, privileges, rights, immunities and benefits conferred by the charter, including the right to elect directors, is invested in the holders of the shares then and thereafter subscribed, and section twenty-four, of said charter provides that:

(Rec. p. 27

"Every person who shall cease to be a shareholder shall also cease to be a member of said company, *and the stock of said company shall be exempt from all State and county taxes.*"

In this circuitous manner, by reference and by implication, we have finally reached the source from whence emanates the tax exemption, now asserted by the plaintiff in error.

4. "An act to amend the charter of the Saint Joseph and Iowa Railroad Company, approved November 5, 1857."

Under this act it was provided as follows: (R. p. 28

Sec. 3. For the purpose of further enabling said company to construct, equip and operate said road, they are hereby *authorized to pledge* the said road, rolling stock,

machinery, depots, depot houses, and any other property they may possess, *together with the franchise of said road.*

And herein only rests the assumed power to mortgage and convey the immunity from taxation asserted in the case at bar.

No further legislation, in regard to the matter in hand, took place until the 4th day of July, 1865, when the constitution of that year was adopted. That instrument provided as follows:

"Sec. 27. The General Assembly shall not pass special laws * * * * * exempting any property of any named person or corporation from taxation. * * * * *"

See Sec. 25, Art. 4, Const. 1865.
" " 27, " 4, " "
" " 4, " 8, " "

5. "An act to amend an act, entitled an act to incorporate the Saint Joseph and Iowa Railroad Company, to extend the time for the construction of said road, and to facilitate the construction of the same. Approved March 19, 1866."

(R. p. 29)

This act and preamble was as follows:

"*Whereas, The Board of Directors of the Saint Joseph and Iowa Railroad Company, organized as provided by the charter of said company, opened books for subscription to the capital stock of said company, made surveys, and commenced the transaction of business, but were prevented (by the rebellion intervening) from completing said road as required by the terms of said charter; and whereas, the majority of said Board of Directors have failed to take the oath of loyalty, as required by the Constitution and laws of the State of Missouri, therefore, to secure the completion of said road,*"

"*Be it enacted by the General Assembly of the State of Missouri, as follows:*"

SEC. "1. The charter of the Saint Joseph and Iowa Railroad Company, approved Jan. 22, 1857, be and the same is hereby amended, as follows: That John Severance, Francis Rodman, P. A. Thompson, Josiah Coleman, Thornton Fakes, William Albin, Elwood Kirby and Henry Baker shall constitute the Board of Directors of said Company; they shall hold their offices until their successors are qualified, and they shall determine by by-laws what number of directors shall constitute a quorum.

The rights, privileges and immunities that belong to, or are vested in the Board of Directors, by virtue of the act to which this act is amendatory, not inconsistent with this act, TOGETHER WITH THE PROPERTY, RIGHTS AND CREDITS OF SAID CORPORATION, *created by said act, shall be vested in and shall belong to the board herein named and their successors in office, and they shall have power to hold the books and papers of such corporation."*

SECTIONS 2, 3, 4, 5 and 6 are immaterial to this controversy, and section 7 provided that the act should take effect from and after its passage.

6. *On the 21st day of March, 1868*, the legislature of Missouri passed "*an act to facilitate the building of branch railroads in the State of Missouri.*" (Sess. acts 1868, p. 90)

SECTION 1 of this act provided that any railroad, having by law authority to build branches, might, by resolution of the Board of Directors, avail themselves of the provisions of the act, and a copy of such resolutions were to be filed in the office of the secretary of State. It was under this section that the resolutions of March 25, 1871, hereinafter mentioned, were adopted. Said act further provided as follows:

SEC. 2. * * * "They may borrow money and issue bonds secured by mortgage on such branch road to aid in its construction, and in general *may operate, lease, sell or consolidate* with any connecting road, *distinct and separate from their main line*, and in any other way, may manage or dispose of such branch, as by law they may be authorized with reference to their main line, *and separate therefrom.*"

"SEC. 3. * * * And in all respects the interests of the stockholders in the branch shall be kept separate and distinct from the interests of the stockholders in the main line."

"SEC. 4. * * * In all matters directly and specially affecting the interests of such branch the stockholders in such branch shall control, and for such purpose the directors, under their by-laws, may, or, on petition of parties representing one-tenth of such stock, shall, call a meeting of such stockholders in such branch, setting forth the object of such meeting; and at any such meeting such stockholders may instruct the Board of Directors in all matters relating especially to their interests, and they shall be governed by such instructions." * * *

machinery, depots, depot houses, and any other property they may possess, *together with the franchise of said road.*

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SECTION 1 of this act provided that any railroad, having by law authority to build branches, might, by resolution of the Board of Directors, avail themselves of the provisions of the act, and a copy of such resolutions were to be filed in the office of the secretary of State. It was under this section that the resolutions of March 25, 1871, hereinafter mentioned, were adopted. Said act further provided as follows:

SEC. 2. * * * "They may borrow money and issue bonds secured by mortgage on such branch road to aid in its construction, and in general *may operate, lease, sell or consolidate* with any connecting road, *distinct and separate from their main line*, and in any other way, may manage or dispose of such branch, as by law they may be authorized with reference to their main line, *and separate therefrom.*"

"SEC. 3. * * * And in all respects the interests of the stockholders in the branch shall be kept separate and distinct from the interests of the stockholders in the main line."

"SEC. 4. * * * In all matters directly and specially affecting the interests of such branch the stockholders in such branch shall control, and for such purpose the directors, under their by-laws, may, or, on petition of parties representing one-tenth of such stock, shall, call a meeting of such stockholders in such branch, setting forth the object of such meeting; and at any such meeting such stockholders may instruct the Board of Directors in all matters relating especially to their interests, and they shall be governed by such instructions." * * *

7. *On the 24th day of March, 1870,* "An act to amend chapter sixty-three of the General Statutes, of railroad companies, so as to authorize the consolidation, leasing and extension of railroads," was passed by the Missouri legislature, which was declared to be an amendment of the general law upon the same subject as section 52 thereof.

That part of section two of the last named act, applicable to the present controversy was as follows:

"SEC. 2. Any railroad company organized in pursuance of the laws of this or any other State or of the United States, *may lease or purchase all or any part of a railroad with all of its privileges, rights, franchises, real estate and other property,* the whole or a part of which is in this State * * * upon such terms as may be agreed upon between said companies respectively, or any railroad company, * * * may extend, construct, maintain and operate its railroad into and through this State, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this State upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and privisions of the laws of this State concerning railroad corporations as fully as if incorporated in this State; *provided,* that no such * * * * * * * purchase (shall be) perfected until a meeting of the stockholders of said company * * * * * shall have been called by the directors thereof, * * * * * * and the holders of a majority of the stock of such company * * * * * shall have assented thereto, or until the holders of a majority of the stock of such company shall have assented thereto in writing, and a certificate thereof signed by the president and secretary of said company or companies shall have been filed in the office of the Secretary of State; *and provided further, that if a railroad company of another State shall lease a railroad, the whole or a part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its railroad into this State, or through this State, such part of said railroad as is within this State shall be subject to taxation, and shall be subject to all regulations and provisions of law governing railroads in this State.*"

The corporate power to purchase was, by the terms of this act, for the first time granted to foreign corporations.

8. *On the 25th day of March, 1871,* John Severance and his associates, named in the act of March 19, 1866, having usurped the powers, privileges, franchises and property of the Saint Joseph and Iowa Company, and presuming to act under the terms of the last mentioned act, adopted resolutions declaring their desire to avail themselves of the benefits of the act of March 21, 1868, entitled "An act to facilitate the building of branch railroads in the State of Missouri," and in said resolutions located the "Central North Missouri Branch of the Saint Joseph and Iowa Railroad."

These resolutions were filed in the office of the Secretary of State on the 19th day of April, 1871.

(R. f. 30.)

9. *On the 23d day of May, 1871,* John Severance and his aforesaid associates, still further presuming to own, claim and hold the rights, privileges, franchises and property, of the Saint Joseph and Iowa Railroad Company, made, executed and delivered to the Burlington and Southwestern Railway Company, the deed of that date purporting to convey to the last named company the aforesaid rights, privileges, franchises and property of the said Saint Joseph and Iowa Company.

This instrument contained the following express conditions, to wit:

"It is further understood and agreed that, if the said party of the second part shall fail to build its railroad to the city of St. Joseph within a reasonable time for the proper accomplishment of such a work, considering the magnitude of the undertaking, *or shall abandon the enterprise, in such event, they shall reconvey to said first party all of the property, rights and franchises hereby sold and conveyed, or the same shall, on the failure to convey, revert to said first party;* but no greater right shall revert, or be reconveyed than is conveyed by this instrument; and such reasonable time shall not be less than three years from the first day of July, A. D. 1871."

(R. f. 34–35, omitted by plff in error)

10. *On the 1st day of May, 1871,* Sullivan county, Missouri, subscribed $200,000 to the capital stock of the "Central North Missouri Branch of the Saint Joseph and Iowa Railroad Company," and *on the 4th day of May, 1871,* Putnam

county, Missouri, subscribed $50,000 to said branch, and $100,000 to the alleged main line.

No other stock was ever subscribed to such branch, and Sullivan and Putnam counties were the only holders of stock therein.

11. *On the 1st day of August, 1871,* the representative agents of said counties met at Milan, Missouri. At this meeting the name of the branch was changed to the "Linneus Branch of the Burlington and Southwestern Railway," and such stockholders, the counties aforesaid, at the same time, authorized, or attempted to authorize, the Burlington Company to execute a mortgage upon such branch railroad and all its "*property, rights, privileges and franchises.*"

12. *On the 1st day of April, 1872,* the Burlington Company, presuming to act for and on behalf of the Linneus Branch, made, executed and delivered, as of that date, a mortgage to the "Farmers Loan and Trust Company, of New York," to secure the payment of certain bonds in the mortgage mentioned. (R. p. 43-57)

The granting clause of this mortgage was as follows:

"All the present and in future to be acquired property of, or in any manner pertaining to said Linneus Branch of the Burlington and South Western Railway Company, and all the right, title and interest and equity of redemption therein, whether of said company, or the stockholders in said branch or leased premises, that is to say, all the branch railroad, including the premises leased as aforesaid, of the Lexington, Lake and Gulf Railroad Company, now made and to be constructed, extending from the main line of said Burlington and Southwestern Railway, at or near Unionville, in the county of Putnam, in the State of Missouri, by the way of Linneus and Lexington to Kansas City, and by the line of said leased premises from Lexington to Butler, in Bates county, Missouri, and to such other points in southwestern Missouri as may be determined upon by the Board of Directors, or howsoever said branch line of road including said leased premises may be described or built, including the right of way therefor, road-bed, superstructure, iron ties, chains, splices, bolts, nuts, spikes, and all the lands and

depot grounds, station houses, depots, viaducts, bridges, timber and materials, and property purchased and to be purchased or otherwise acquired for the construction and maintenance of said branch railroad, and all the engines, tenders, cars and machinery, and all kinds of rolling stock now owned or hereafter purchased by said party of the first part, for and on account of said branch railroad, and all the revenue and income of said Linneus Branch, *and all the rights, privileges and franchises relating thereto, etc.*"

13. *On the 2d day of August, 1875*, the people of Missouri adopted a new Constitution.

Sections 2, 5 and 10 of Art. X of said Constitution are as follows:

"Sec. 2. The power to tax corporations and corporate property shall not be surrendered nor suspended by act of the General Assembly."

"Sec. 5. *All railroad corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal and other purposes,* on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock."

"Sec. 7. All laws exempting property from taxation, * * * shall be void."

Section 21 of Art. XII. is as follows:

"Sec. 21. *No railroad corporation in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.*"

14. *On the 19th day of May, 1876*, because of a previous default in the payment of the interest due on the bonds secured by the branch line mortgage, the Circuit Court of the United States for the Western District of Missouri, entered a decree foreclosing such mortgage in such decree, using substantially the same descriptive words as were used in the mortgage, and appointed Harry Lacey, as special master, to sell the property in pursuance of the decree.

(R. p. 62 - 66)

15. *On the 30th day of November, 1880*, Harry Lacey, as special master, sold the Linneus Branch to Elijah Smith,

and *on the 13th day of December, 1880*, made to Smith a deed therefor, in such deed substantially following the description contained in the mortgage and decree of foreclosure.

(R. f. 73. 74)

16. *On the 30th day of May, 1881*, the Kansas City, St. Joseph & Burlington Railway Company organized under the general laws of the State of Missouri, and filed its articles of association with the secretary of State as of that date.

17. *On the 12th day of January, 1882*, the Chicago, Burlington and Kansas City Railway Company, of Iowa, and the Kansas City, St. Joseph and Burlington Company, of Missouri, were consolidated under the general laws of Missouri, by the name of the Chicago, Burlington and Kansas City Railway Company, by filing their articles of association and consolidation with the secretary of State of the State of Missouri.

18. *On the 27th day of February*, 1882, Elijah Smith, reciting the fact that he had previously purchased, "*All of that certain railway known as the Linneus Branch of the Burlington and Southwestern Railway, extending southwardly from said Unionville, through the counties of Putnam, Sullivan and Linn, in said State, with all of the property, rights, privileges and franchises belonging or appertaining thereto*, and that in such purchase he acted as trustee for the bondholders, made a quit claim deed of that date, to the Chicago, Burlington and Kansas City Railway Company.

(R. f. 85-86)

19. This suit was instituted in the Circuit Court of Putnam County, Missouri, by the State of Missouri, at the relation of John F. Guffey, as collector of the revenue for that county, against the Chicago, Burlington and Kansas City Railway Company to recover certain State, county and other taxes, theretofore levied and assessed against the property of said company.

On the trial of said cause, the plaintiff recovered a judgment, from which the railway company appealed to the Supreme Court of Missouri.

20. On the 17th day of May, 1886, the Supreme Court of Missouri affirmed the judgment of the Circuit Court of Putnam County.

From the judgment thus rendered, the Chicago, Burlington and Kansas City Railway Company sued out a writ of error, returnable into this court, and as ground for such error allege:

That the Saint Joseph and Iowa Company was by its charter exempt from the payment of State and county taxes.

That such exemption from taxation was an irrepealable contract between the State and said company, and that the plaintiff in error by reason of the afore-mentioned conveyances had become entitled thereto.

That in consequence thereof the judgment of said Supreme Court, that by the terms of the second section of the act of March 24, 1870, the aforesaid property became subject to taxation, regardless of previous exemptions, if any existed, impaired the obligation of the supposed contract in question, and hence the judgment of said court was in derogation of the Constitution of the United States, and upon this ground the plaintiff in error seeks a reversal of the judgment in this case.

The judgment of the Supreme Court of Missouri is placed upon three distinct grounds as follows:

I.

The branch, the taxation of which is in controversy, was projected and built under the Branch Aid Act of 1868, and is subject to taxation, regardless of any exemptions which might have existed in favor of the parent company.

II.

The legislature has the right to prescribe the terms upon which a foreign railroad company may come into this State, and as the Burlington company could only acquire the right to purchase under the act of March 24, 1870, it became thereby subject to taxation.

III.

The Saint Joseph and Iowa Company had no authority under its charter to sell its franchises. It was not authorized to pledge immunity from taxation, and such exemption did not pass under the several judicial and other conveyances to the defendant company.

The opinion of the court accompanying such judgment of affirmance is as follows: (R. p. 121–125)

IN THE SUPREME COURT OF MISSOURI, APRIL TERM, 1886.

STATE, EX REL. CRUMPACKER,	*Plaintiffs in Error.*
vs.	
CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY CO.	*Defendant in Error.*

and

STATE, EX REL. GUFFEY,	*Respondent.*
vs.	
CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY CO	*Appellant.*

BLACK, J.—These suits were argued at the same time, present the same questions and will be considered together. The plaintiffs are collectors of the revenues, one of Sullivan and the other of Putnam county. They seek to recover delinquent taxes for 1881 and 1882. The defendant claims to be the successor of the charter rights of the St. Joseph and Iowa Railroad Company and by reason thereof exempt from the payment of the taxes in suit.

The St. Joseph and Iowa Company was created by the act of Jan. 22, 1857. This charter was amended by the acts of Nov. 5, 1857, and March 19, 1866.

The third section of the first named act provides that the company shall be subject to the same restrictions, and entitled to all the rights, privileges and immunities which were granted to the H. & St. J. R. R. Co. by the act of Feb. 16, 1847, and two designated amendatory acts. The charter

of that company contains a like reference to the act creating the Louisiana and Columbia R. R. Co. approved on Jan. 27, 1837.

By these various acts the directors of the St. Joseph and Iowa Company were authorized to construct a railroad from St. Joseph to some point on the Iowa line, so as to connect there with any railroad in this or that State; "to make * * branches along said road, or at the termination thereof, as they may deem necessary." And it is also declared: "Every person who shall cease to be a stockholder shall cease to be a member of said company; and the stock of said company shall be exempt from State and county taxes."

On the 25th of March, 1871, the directors passed a resolution asserting their desire to avail themselves of the act entitled "An act to aid the building of branch railroads in the State of Missouri," approved March 21, 1868; the branch to be known as the Central North Missouri Branch, and to be built from a point on the main line near Unionville, through Putnam, Sullivan and Linn counties, and the town of Linneus. Sullivan and Putnam counties subscribed to the stock of the road for the use of the branch. At the request of the agents of those counties, they being the only stockholders, an executive committee for the branch was appointed with power to survey, etc.

Thereafter, and on May 23, 1871, the Board of Directors of the St. Joseph and Iowa Company, by their deed and contract, sold and conveyed the main line and all of the property of the company, including "all the rights, privileges, franchises, power and authority, owned or held" by said company, to the Burlington and Southwestern Railway Company, a corporation created under the laws of the State of Iowa.

Afterward, and in 1872, the directors of the Burlington Company, acting by the direction of the stockholders of the branch road then called the Linneus Branch, placed upon the branch road a mortgage to secure certain bonds. The main line had been previously mortgaged. The defendant purchased the branch road through a foreclosure sale had

upon the mortgage thereon. The taxes in suit were assessed upon this branch road property.

I.

The exemption of the stock of the St. Joseph and Iowa Company, it may be conceded, was also an exemption of the property represented by it. As between the State, the company and the stockholders, it is assumed, for all the purposes of this case, that the property, of the company, including any branch road built solely under authority of the charter, would be exempt from State and county taxes.

The further question then arises, is the property of the branch, avowedly built under the Branch Act of 1868, also exempt?

The power of the legislature to forever place property out of and beyond the reach of taxation, upon no other consideration than that which may be presumed to accrue to the public by the building of a railroad, is so far reaching in its logical consequences that the exemption should be confined to the clear and strict terms of the law. The abandonment of the right of taxation can not be presumed, and must appear in clear and unequivocal terms: *Pacific R. R.* v. *Cass Co.*, 53 Mo. 17, and cases cited.

The constitution of 1865 deprived the General Assembly of all power to thereafter exempt this class of property. (Art 11, Sect. 16). The Branch Railroad Act of 1868 makes no such effort. If this property is free from taxation it is because of the charter privileges of the St. Joseph and Iowa Company.

The charter has in view main and branch lines which are parts of one entire piece of property, with one management and one set of stockholders. The Branch Act, it is true, applies only to such roads as have power to build branches; but by the act the stock subscriptions are to be made in aid of the branch and the certificates must so state. The cost and expenses of construction and operation of that and the main line are to be kept separate. Neither can participate in the profits of the other. Neither can be

held for the debts of the other. The branch stockholders have nothing whatever to do with the main line; they determine all matters specially affecting the branch, and the directors must be guided by their instructions. They may participate in the choice of officers only. Here we have a branch road, and while it has no separate corporate existence, yet for nearly all practical purposes it is a separate organization.

It can not be that stock and property of that character and with these attributes was ever contemplated by the legislature when it said the stock of the St. Joseph and Iowa Company should be exempt from State and county taxes. Such exemption ought not to be extended or permitted to go farther than the express terms of the law and the clear intention of the parties to the contract. Had the branch never been divorced from the main line, still, projected as it was under this act of 1868, the property ought to be held subject to taxation even in the hands of the St. Joseph and Iowa Company.

II.

Again the St. Joseph and Iowa Company had no authority by any of the provisions contained in its charter to sell its franchises, though it had to pledge them. The power to sell was only given by the act of March 24, 1870. (Acts of 1870, p. 90.) The deed from the St. Joseph and Iowa Company to the Burlington Company was evidently made by authority of the second section of that act, which after providing that any railroad company may aid another company in the construction of its road for the purpose of forming a connection, and that any company of this State may extend into an adjoining State; provides also: "or any railroad company organized in pursuance of the laws of this or any other State, or of the United States, may lease or purchase all or any part of a railroad with all of its privileges, rights, franchises, real estate and other property the whole or a part of which is in this State, and constructed, owned or leased by any other company, if the lines of said road or

roads of said companies are continuous or connected at a point either within or without this State, upon such terms as may be agreed upon between said companies respectively * * * ; provided that no such aid shall be furnished, nor any purchase, lease, subletting, or arrangements perfected until a meeting of the stockholders * * *; and provided further that if a railroad company of another State shall lease a railroad, the whole or a part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its railroad into this State, such part of said railroad as is within this State shall be subject to taxation, and shall be subject to all regulations and provisions of law governing railroads in this State," etc.

It is true the last proviso speaks of a lease, but does not, in terms, of a purchase by the foreign corporation, as does the preceding portion of the section, but it does provide for all those cases where the foreign company shall lease a road, the whole or a part of which is in this State, or shall make arrangements for operating the same under the provisions of the act, or shall extend its road into this State. When the proviso speaks of the company of another State extending its road into this State or making arrangements for operating a road, the whole or a part of which is in this State, it includes an arrangement by purchase.

The proviso, though using different language, was evidently designed to be as broad as the previous portion of the section, and to include all those cases where the company of the other State is allowed to make arrangements for the operation of the road in this State, whether by lease, purchase or otherwise.

The legislature, in giving a corporation of another State power to purchase a railroad in this State with the privileges and franchises belonging thereto, had the undoubted right to prescribe the terms upon which the purchase could be made. As was said in *Owen* v. *St. L. & S. F. R. R. Co.*, 83 Mo. 455, when speaking upon another subject, the manifest policy was to get legislative control of all railroad corporations. The Burlington Company, by availing itself of

the provisions of this act of 1870, thereby signified its acceptance of the provisions thereof and is bound thereby.

It follows that the Burlington Company could not and did not acquire the immunity from taxation. It did not pass to that company at all, and the property acquired by the purchase became subject to taxation including the branch

The part of the main line from Unionville to St. Joseph has never been built; the other portion, some fourteen miles in length, was built by the Burlington Company. As to the branch it is not even shown that preliminary surveys had been made until after the date of the deed, though two counties had made subscriptions for stock thereto. From the date of the deed the directors of the Burlington Company occupied the same relation to the branch that the directors of the St. Joseph and Iowa Company had before occupied.

If, as we have seen, the Burlington Company did not acquire the immunity from taxation it is difficult to see how any branch built by it could take on the exemption.

Any branch it might build became also subject to taxation.

III.

Referring again to the mortgage on the branch road, of date April 1, 1872, it will be seen it was made by the directors of the Burlington Company, at the request of the stockholders in the branch. The authority contained in the branch act of 1868 is as follows: "They may borrow money and issue bonds secured by mortgage on such branch road, to aid in its construction, and in general may operate, lease, sell or consolidate with any connecting road, distinct and separate from their main line, and in any other way may manage or dispose of such branch as by law they may be authorized, with reference to their main line, and separate therefrom."

There is a provision in the act of Nov. 5, 1857, which gives the St. Joseph and Iowa Co. power to pledge their road and property "with the franchises of said road" to

raise money to liquidate debts, etc. There is not a thing in the act of 1868 which can by any possibility be construed to authorize a transfer by mortgage or otherwise of the immunity from taxation, if any the branch road ever had. But if that act is to be read with the charter provision above quoted, still there is no authority to convey by mortgage or otherwise such right of exemption: *Morgan* v. *Louisiana*, 93 U. S. 217; *Railroad Company* v. *Commissioners*, 112 U. S. 617.

These decisions show that exemption from taxation is a personal privilege to the person or corporation to which it is given, incapable of transfer unless there is express statutory authority therefor.

Franchises, it is said in the first of the above cases, "are positive rights or privileges without the possession of which the road of the company could not be successfully worked. Immunity from taxation is not one of them."

There is nothing in either of these acts or the act of 1870 which calls for a broader signification to be given to the term "franchises" than is given in the foregoing definition.

It must follow that there never was any authority given by law to convey or assign by pledge the right to be exempt from taxation, and it is therefore immaterial what words were used either in the mortgage or decree of foreclosure.

Other questions were discussed, but it is unnecessary to consider them as they can not change the result. All concur.

The judgment in the first of these cases is therefore reversed, and the cause remanded; that in the other is affirmed.

The defendant in error maintains that this judgment should be affirmed, and in support thereof submits the following:

BRIEF AND ARGUMENT.

I.

THE POWER OF TAXATION IS ONE OF THOSE ATTRIBUTES OF SOVEREIGNTY WHICH, UNDER OUR SYSTEM OF GOVERNMENT, IS ABSOLUTELY NECESSARY FOR THE MAINTENANCE OF THE GENERAL WELFARE, AND ITS SURRENDER IS BEYOND THE LEGISLATIVE POWER.

Constitutions are such *written* expressions of the public will, as are deemed necessary for the public good, and are adopted and promulgated by the citizens of a State in their sovereign capacity for the promotion of the general welfare.

Where this instrument of organic force provides a rule of action, its mandates and its inhibitions are alike binding and conclusive upon governmental power, the courts and the people.

Around and about these written expressions of the sovereign will, stands forth the public policy of the State, or that unwritten and inherent law which makes all things void that are contrary to the general welfare.

Where the written constitution neither grants nor prohibits a legislative power, the legislative act is to be measured by the unwritten and inherent law of the general welfare.

The plaintiff in error contends that the act of January 22, 1857, incorporating the Saint Joseph and Iowa Railroad Company, is irrepealable.

That it is a contract in perpetuity, binding alike upon constitutional conventions and all subsequent legislatures.

If the act in question was contrary to the terms of the written constitution then in force, it was void for that reason.

If it was repugnant to the unwritten constitution, or the inherent law of the public welfare, it was contrary to public policy and equally void.

Sec. 20, of Art. XIII, of the Constitution of the State of Missouri, adopted in 1820, provides:

"That no title of nobility, hereditary emolument, privilege or distinction shall be granted."

If you give to the act of 1857 the construction claimed by the plaintiff in error, then such assumed immunity becomes, in its nature, an hereditary privilege, which, by the terms of the written constitution then in force, the legislature was prohibited from granting.

If it should be held that the constitution of 1820, in the provisions cited, did not prohibit the passage of the act of 1857, yet the grant of immunity from taxation can be based on no express authority found therein.

To assume that the legislature of 1857 had the power to grant perpetual exemption from taxation to one person, or to one corporation, binding upon all subsequent legislatures and constitutional conventions, is to assume the power of one legislature to declare that thenceforth and forever, the property of every person and corporation shall be exempt from the payment of all State and county taxes.

In the latter instance no court would hesitate to declare such an act subversive of the government, contrary to public policy and void.

As there could be no hesitation in the last instance, why should there be in the first?

The only difference consists in the degree of injury to the public welfare, and both are void as contrary to public policy.

The contrary doctrine rests alone on bad precedents founded upon ideas inimical to our institutions, and ought not to be followed.

In the advancement of this argument, we are met with the assertion that this exemption will be maintained by the court, because the power of the State to make a contract of exemption is settled beyond dispute.

To this it is replied, that cases of this character can have no binding precedents in derogation of public right.

They can only be settled, in the overthrow of those presumed contracts and privileges, which are found contrary to the constitution, or contrary to a sound public policy.

This act, having its source in the prolific fountain of assumed legislative power, could in no event constitute a contract of exemption, unless there was a consideration for the act.

There was no consideration flowing from the corporators named in the act to the State; no burdens imposed; no duties enjoined.

The act in question, being without consideration, constitutes simply the promise of a gratuity, which may be kept, changed or recalled at pleasure.

No presumptions exist in favor of such exemption, but, on the contrary, every reasonable doubt is to be resolved against it.

Sec. 20, Art. 13, Const. 1820.
Sec. 7, Art. 1, Chap. 34, Vol. 1, R. S., 1855.
Pacific R. R. v. *Renshaw*, 18 Mo. 215.
Washington University v. *Rouse*, 8 Wall. 443–444. (Dissenting Opinion.)
Tucker v. *Ferguson*, 22 Wall. 528.
Field on Corporations, pp. 574–5.

II.

The amendatory act (so called) approved March 19, 1866, under and through which the plaintiff in error must, if at all, maintain the exemption claimed, is unconstitutional and void.

The constitution of Missouri, adopted in the year 1865, went into full force and effect on the 4th day of July, 1865, and from that time became the written organic law of the State, binding alike upon the legislature and the people.

Sec. 27 of Art. 4 of this constitution provides as follows: "The General Assembly shall not pass special laws, * * * exempting any property of any named person or corporation from taxation. * * *

SEC. 4 of Art. 8 is as follows:

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered, amended or repealed."

The unconstitutionality of the act in question is maintained upon the following grounds:

1. The legislature of Missouri, in the passage of the act of March 19, 1866, could only grant, if at all, corporate powers and privileges to the corporators named in that act, subject to the constitutional limitations and restrictions imposed by the constitution of 1865, under which they presumed to act.

It is clear, therefore, that it was without power to grant for the first time the exemption claimed by the plaintiff in error.

It is equally clear that it was without power to do by indirection, those things which the constitution prohibited it from doing directly.

If this was an attempted new grant of corporate power, and a renewal of the exemption claimed under the act of 1857, then it plainly falls within the inhibitions of the constitution and must fail for that reason.

If it be claimed that it contains no new grant of corporate power, then it failed in the accomplishment of the purpose intended, and it is inoperative and void.

Will it be seriously contended by the counsel for the plaintiff in error, that without the provisions of the act of March 19, 1866, John Severance and his associate corporators would have had or acquired any corporate powers whatever? Certainly not.

They either derived their corporate powers and privileges under the provisions of the act in question, or they never acquired any.

The primitive source of the claim for exemption, now asserted by the plaintiff in error, rests, therefore, in the act of 1866.

Under the constitutional provisions then in force, it was beyond the legislative power to grant immunity from taxation.

Louisville and Nashville R. R. Co. v. *Palmers*, 109 U. S. 254–5.
Trask v. *Maguire*, 18 Wall. 391–409.
Shields v. *Ohio*, 95 U. S. 319–22.

2. If the act of March 19, 1866, was enacted at the request of John Corby and his associate corporators named in the act of 1857, then such action was a voluntary surrender of the chartered rights of the corporators under that act.

If prior to the passage of the act in question, the corporators named in the act of 1857 voluntarily surrendered their chartered rights and property to the State of Missouri, then in such surrender they submitted to a voluntary dissolution, whereby the old corporation was destroyed and a new one attempted to be created as of date March 19, 1866.

The act of 1866 is therefore to be measured by the provisions of the constitution of 1865; if inhibited by either of the provisions cited, then such act must fail because of its unconstitutionality.

That the act itself, and as well also the exemption claimed, are contrary and repugnant to the constitution, is beyond question.

If the position assumed by counsel for the plaintiff in error, in relation to the force and effect of the act of March 19, 1866, be correct, then the constitutional restrictions quoted can readily be set at naught and evaded.

If this act, in relation to this exemption, is to be sustained in the face of these positive inhibitions of that constitution, laws may even now be passed enacting that immunity from taxation and other valuable franchises of designated corporations antedating the constitution, shall, upon their voluntary or involuntary dissolution, pass to and vest in certain newly created institutions of a like kind.

Owen v. *St. L. & S. F. R. R.*, 83 Mo. Rep. 458.
Louisville & Nashville R. R. Co. v. *Palmer*, 109 U. S.

3d. The act of 1857, purported to be a present grant, then made to John Corby and his associates of the same rights, privileges, franchises and immunities, theretofore granted to the Hannibal and St. Joseph, and Louisiana and Columbia Railroad Companies.

Under this legislative grant, conceding for the time the power to make it, the rights, privileges, franchises and immunities thereby granted when accepted, became vested as a property right in the persons named as corporators, and the shareholders of said company, and unless the same was afterward forfeited, or was surrendered back to the State by their own subsequent action, or expired by its own limitation as therein contained, such vested property rights are still existent in them.

In the preamble to the act of March 19, 1866, it is asserted that "the Board of Directors organized under the act of 1857 made surveys and commenced business, but were prevented (by the rebelli n intervening) from completing the road; that a majority of the Board of Directors having failed to take the oath of loyalty required by the Constitution and laws of the State of Missouri, therefore, to secure the completion of said road, be it enacted, etc."

Although John Corby and his associates have accepted the terms of th act of 1857 and organized thereunder, obtained subscriptions to their capital stock, made surveys and commenced the transaction of business, yet because they were unable to complete the work by reason of the civil war, the chartered rights and corporate property vesting in them by reason thereof are to be transferred by an act of legislative confiscation to John Severance and his associates, be ause, as alleged in the preamble, a portion of the directors have failed to take the oath of loyalty!

If the legislature of Missouri, in this act of March 19, 1866, attempted to make a legislative transfer and conveyance of the rights, privileges, franchises and property vested in John Corby and his associate corporators, under the act of 1857, to John Severance and his associates, it had neither constitutional authority or power to that end.

To sustain the act in question, it is necessary to maintain the legislative power to confiscate the property of one person or corporation and its transfer by legislative act to another.

This can not be upheld as a proper exercise of the legislative functions of government and the refutation of the proposition lies in its statement.

If the act of 1857 constituted an irrepealable contract between the State and John Corby and his associate corporators, as claimed by the plaintiff in error, how could the Constitution of 1865 requiring them to take the oath of loyalty become operative and binding? Yet, their further claim is, that such Constitution did become operative and binding upon them, in that, it rightfully imposed the taking of the oath of loyalty as a condition precedent to the exercise of their corporate powers; and that because of their neglect, inability or refusal to take such oath, it was proper by an act of legislative conveyance and confiscation, to transfer the rights, privileges, franchises, property and credits invested in, and belonging to them, to John Severance and his associates.

If one provision of the Constitution is to be sustained as of binding force and effect, by what rule of construction are those other provisions of the same Constitution excluded, which declare that their property shall be subject to taxation?

The contention of the plaintiff in error is that the act in question only designated another board of directors, in lieu of those named in the act of 1857.

The maintenance of this proposition is equally fatal.

Under the act of incorporation, the directors of the company were to be elected by the shareholders, each share having one vote.

If there were any shareholders, then the right to elect directors was a property right vested in them by virtue of the charter, and the designation of a Board of Directors by the General Assembly was without power and void.

If, on the contrary, there were no vested rights existing

in John Corby and his associate shareholder, under the act of 1857, then the inhibitions of the Constitution of 1865, became operative and bars the exemption claimed.

Shields v. *Ohio*, 95 U. S. 323.
Trask v. *Maguire*, 18 Wall. 405.
Householder v. *Kansas City*, 83 Mo. 492.
State ex rel. Haussler v. *Greene*, 78 Mo. 193.
Sec. 27, Art. 4, Const. of 1865.
Sec. 4, Art. 8, Const. of 1865.

III.

The Saint Joseph and Iowa Railroad Company did not acquire exemption from taxation under its several acts of incorporation.

The constitution of 1865 went into force and effect on the 4th day of July of that year. In that instrument it was provided that "The General Assembly shall not pass special laws * * * exempting any property, of any named person or corporation from taxation. * * *

Sec. 27, Art. IV, Const. of 1865.

By reference to the act of March 19, 1866, it will be found that there was no express grant of immunity from taxation to John Severance and his associates; but the grant is "the rights, privileges and immunities, together with the property, rights and credits" theretofore invested in and belonging to John Corby and his associates, under the act to incorporate the Saint Joseph and Iowa Railroad Company, approved January 22, 1857.

By the last named act it was declared that under the same restrictions the Saint Joseph and Iowa Company should be entitled to all the privileges, rights and immunities of the several acts mentioned relating to the incorporation of the Hannibal and St. Joseph Company.

The legislature of 1857 was content to grant to John Corby and his associate corporators the like privileges,

rights and immunities which had been theretofore granted to the Hannibal and St. Joseph Company.

Not so the legislature of 1866. In the plen itude of its assumed power it attempts to grant to John Severance and his associates not only the same identical "rights, privileges and immunities" theretofore granted to John Corby and his associates, but as well, also, "the property, rights and credits" theretofore invested in, and belonging to, said John Corby and his associates.

In none of the several acts incorporating the Hannibal Company was there any express grant of immunity from taxation, but turning to the acts in question we find it therein declared that under the same restrictions it should be entitled to all the privileges, rights and immunities of the Louisiana and Columbia Railroad Company. The stock of the last named company, by the act of its incorporation, approved January 27, 1838, is declared to be exempt from State and county taxes.

By no such process of indirection, in the face of the constitutional inhibition cited, can the grant of exemption from taxation be presumed or maintained.

Morgan v. *Louisiana*, 93 U. S. 217.
R. R. Co. v. *Gaines*, 97 U. S. 697.
R. R. Co. v. *Commissioners*, 103 U. S. 1.

IV.

Immunity from taxation, if it can exist at all, is personal to the corporation to which it is granted, and is incapable of transfer without express statutory authority existing on the one part to sell, and in the other to purchase.

The branch line stockholders, at their meeting August 1, 1871, attempted to authorize the Burlington and Southwestern Railway Company to execute a mortgage upon such branch railroad and all its "*property, rights, privileges and franchises.*"

In pursuance of the authority then given, the name was changed from the Central North Missouri Branch of the

Saint Joseph and Iowa Railroad, to that of the Linneus Branch of the Burlington and Southwestern Railway, and the mortgage dated April 1, 1872, was executed upon the property by the latter name.

The language of the mortgage in question, executed in pursuance of the authority stated, after giving a specific description of the entire property is, "*and all the rights, privileges and franchises relating thereto.*"

The same descriptive words are contained in the decree of foreclosure, and are in turn followed by a like description in the maste's deed to Smith.

Whatever doubts may exist as to the legislative power to grant immunity from taxation, yet if this power be conceded, together with the right of transfer from one person or from one corporation to another, such exemption can not be conveyed, except in pursuance of an express statutory direction authorizing the transfer.

Upon the latter proposition, there is neither doubt nor diversity of opinion.

The contention of the plaintiff in error is, that the phrase "*together with the franchise of said road,*" as used in the amendatory act of Nov. 5, 1857, constituted sufficient authority to pledge and convey the exemption claimed.

To give to such words the force and effect claimed for them by the plaintiff in error, can only be done by construction and implication, which is never resorted to when the result is to deprive the State of the means necessary to maintain its integrity.

Morgan v. *Louisiana*, 93 U. S. 223.

Owen v. *St. Louis & San Francisco R. R. Co.*, 83 Mo. 458.

Memphis R. R. Co. v. *Commissioners*, 112 U. S. 617.

Louisville & Nashville R. R. Co. v. *Palmer*, 109 U. S. 244.

The stockholders of the branch line attempted to authorize the execution of a mortgage upon the "*property, rights, privileges and franchises*" of such branch.

By such words of description, without other designation, immunity from taxation was not authorized to be pledged.

Morgan v. *Louisiana*, 93 U. S. 223.
R. R. Co. v. *Gaines*, 97 U. S. 697.
R. R. Co. v. *Commissioners*, 103 U. S. 1.

The master's deed to Elijah Smith, as of necessity it must, followed the language of the decree; the decree operated only upon the property described in the mortgage; the mortgage was limited (and it attempted to convey no other) to the property authorized to be pledged by the branch line stockholders.

The slightest allusion to immunity from taxation, as one of the subjects of those various and respective instruments, nowhere exists.

Although a matter of the highest importance, it is reserved as an afterthought and for a later period.

Under the judicial sale made by Harry Lacey, master in chancery, to Elijah Smith, trustee, evidenced by the master's deed, dated Dec. 13, 1880, said Smith became invested with such rights, privileges and franchises only as were a necessary incident to the proper use and enjoyment of the property purchased.

Immunity from taxation was not one of them.

Morgan v. *Louisiana*, 93 U. S. 317.
Louisville & Nashville R. R. Co. v. *Palmer*, 109 U. S. 244.
Memphis R. R. Co. v. *Commissioners*, 112 U. S. 623.

The property thus purchased by Smith, from the time of his purchase, Dec. 13, 1880, remained in an embryotic and incubatory condition until Feb. 27, 1882, when, as evidenced by his deed of quit claim, he conveyed the property in question to the plaintiff in error.

Although in the prefatory part of this quit claim deed he recites a purchase of the property and all the "rights, privileges and franchises" relating thereto, yet in the plenitude of assumed power, and in the fullness of a yearning desire, we find in the granting clause of his deed to the plaintiff in

error, that he not only conveys the property previously purchased, but attempts to convey in addition, "all the rights, privileges, franchises, and *immunities* belonging or appertaining thereto."

The stockholders of the branch line withhold their consent to the conveyance of the supposed immunities; the mortgage conveys none; they do not enter into the decree of foreclosure; and they were not conveyed by the master's deed; yet from out this period of incubation, and emanating in the fertile imagination of an expedient grantor, springs immunity from taxation, which, like the endless flow of the river, is to go on forever.

The deed from Elijah Smith to the plaintiff in error, dated Feb. 27, 1882, and as well, all the proceedings leading up thereto and culminating in such deed, in so far as immunity from taxation was sought to be conveyed, were utterly void and of no avail for that purpose.

IV.

The deed of May 23, 1871, purporting to be executed by the Saint Joseph and Iowa Railroad Company of Missouri, to the Burlington and Southwestern Railway Company of Iowa, could not operate to convey immunity from taxation to the Burlington Company.

The objections to this deed may be considered substantially as follows:

1. The act of March 19, 1866, under which the grantors wrongfully assumed the property, rights, privileges and franchises of the Saint Joseph and Iowa Company by virtue of the attempted legislative transfer of that date, is unconstitutional and void.

Even if the power existed in the legislature to pass an act of this character, it could only do so subject to the existing organic law.

Without this act, John Severance and his associate corporators would have had no corporate power whatever.

If not, then the inhibitions of the constitution of 1865 became operative, and the act void because prohibited.

Sec. 16, Art. 11, Const. 1865.

Louisville and Nashville R. R. Co. v. *Palmes*, 109 U. S. 255.

2. It was executed without the consent of the branch line stockholders and therefore as to such branch line was inoperative and void.

Although the Saint Joseph and Iowa Company had at that time neither marked, surveyed, located or built the main line, or any part thereof, and it then existed, as it ever since has continued to exist, a creature of the imagination existing in the minds of the persons assuming to act in that behalf, yet for the purpose of securing an assumed right to receive subscriptions from county courts without a vote of the people, in counties remote from the mythical main line, the location of a branch becomes necessary.

Whereupon, by the resolutions of March 25, 1871, the provisions of the act of March 21, 1868, are adopted, and the Central North Missouri Branch of the Saint Joseph and Iowa Railroad is projected thereunder, wherein the point of intersection with the alleged main line is designated to be at the city of Unionville, Missouri.

See Mo. Sess. Acts 1868, pages 90, 91.

On the 1st day of May, 1871, the County Court of Sullivan County is induced to subscribe $200,000 to the alleged branch.

On the 4th day of May following, the County Court of Putnam County subscribed $50,000 to the branch, and $100,000 to that creature of the imagination, the main line.

In payment of the subscriptions thus made to such branch line, Sullivan and Putnam counties issued their bonds at par to the amounts of their respective subscriptions, becoming thereby, as appears from the record, the sole and only stockholders in such branch line.

Section one of the act of March 21, 1868 authorized the

adoption of the resolution of March 25, 1871, before referred to, and sections 2, 3 and 4 designate the powers of the parent company in relation to such branch.

If the adoption of the resolutions of March 25, 1871, availing themselves of the provisions of the act of March 21, 1868, was sufficient in law to create the branch line thereby attempted to be created, then in virtue of such creation, such branch line *ipso facto*, became invested with the like powers, privileges and franchises possessed by the parent company, not inconsistent with the organic law of the State, yet *distinct and separate therefrom.*

At the time of the execution of the conveyance in question, the branch line, if it existed at all, existed as a separate and distinct organization, subject only, to the control of the stockholders of such branch, and Sullivan and Putnam counties being the sole and only stockholders therein, were alone entitled to control its affairs.

Sullivan and Putnam counties, nor either of them assented to the execution of the deed of May 23, 1871. Hence such deed, in so far as it in any way affected the Central North Missouri Branch, was inoperative and void.

Whatever force and effect may be otherwise adjudged to the deed of May 23, 1871, clearly under the law, for the reasons stated, such deed could have no operation, as a transfer of the property, rights, priveleges and franchises of the branch line, for those could only be transferred by the consent of the stockholders of such branch, separate and distinct from the main line.

Mo. Sess. Acts 1868, pages 90–91.

3. *This deed of May 23, 1871, was a conveyance upon condition, under the terms of which, the property, rights, privileges and franchises, the subject of that conveyance, reverted to and became the property of the Saint Joseph and Iowa Railroad Company, in the admitted non-performance of the stipulated conditions.*

It is not only proved, but admitted, that the Burlington Company, its successors and assigns, nor any other per-

son or corporation for them or either of them, have built the contemplated railroal from Unionville to Saint Joseph, as required by the conditions of said deed, in order to prevent the reversion of the property, rights, privileges and franchises, therein mentioned.

If the building of the road from Unionville to St. Joseph has been abandoned, which the law presumes from lapse of time, then under the terms of this conveynace, the property rights, privileges and franchises, which were the subject of that conveyance, without any act done or to be done by the Burlington Company, or its successors and assigns, reverted to the grantor therein, the Saint Joseph and Iowa Railroad Company.

Cowell v. *Springs Co., 100 U. S. 55.*
Hooker v. *Turnpike Road Co., 12 Wendell, 371.*

One of the claims made by the plaintiff in error is, that in and by this deed, the Saint Joseph and Iowa Company not only conveyed its powers, privileges, franchises and property to the Burlington Company, but conveyed as well also, *its corporate entity*, and thereby ceased to exist.

If this position be correct, what then becomes of this reversionary clause, which is also a part of this conveyance.

If by this deed, it has wiped itself out of existence, by what process of incubation is it to become rehabilitated with corporate power?

That it did not convey, nor intend to convey, its corporate entity and power, is plainly evident from the fact of its providing for a contigent reversion of the things conveyed.

The franchise of becoming and being a corporation, is incapable of passing by assignment.

Memphis R. R. Co. v. *Commissioners*, 112 U. S. 619.

Even if immunity from taxation could pass by the deed in question, yet before such exemption can inure to the benefit of the grantee and its assigns, it devolves upon the corporation asserting such exemption, to show by affirmative proof the performance of those conditions, which, if unper-

formed, causes a reversion, or at least an excuse for such non-performance, in a waiver of the conditions by the grantor.

No such proof appears in this case, and the presumptive reverter becomes absolute, on proof, or the admitted non-performance of the required conditions.

This is a direct proceeding by the State to compel the payment of taxes.

In this attempt to assert its sovereign power, the proof of exemption lies upon they who assert it, and who are to be benefitted in its establishment. Nothing is to be presumed in its favor, but on the contrary every reasonable doubt is to be resolved against it.

Should this company assume to fix its own rates of fare, toll, etc., in defiance of the maximum rates fixed by law, and some person, injured by reason of such excessive charges, should sue for such excess and the penalties imposed, and as a defense to the plaintiff's action, it should allege, that by reason of its special charter, it had the right to fix its own rates of fare, etc., would the plaintiff's right of action be barred in the mere assertion of these rights by the defendant? Certainly not.

On the contrary, would he not have the right to reply that such special charter was unconstitutional and void?

Or that by reason of its own subsequent action it had become subject to the provisions of the general law, which rendered the tolls excessive and plaintiff entitled to recover?

This proposition will not be seriously doubted. If not, the State has an equal right with the individual, for *prima facie* it is entitled to the recovery of the taxes sued for.

Hooker v. *Turnpike Road Co.*, 100 U. S. 55.
*Grand Rapids Bridge Co.*v. *Prauge*, 35 Mich. 400.

4. *Under the laws of the State of Missouri, prior to the act of March 24, 1870, a railroad company organized under the laws of another State, was not authorized to lease or pur-*

chase, or to erect, maintain and operate a railroad in this State as a foreign corporation.

The power to do so was for the first time granted by the terms of said act, which was the law of the State at the time of the execution of such instrument.

And the authority for such purchase and conveyance rests solely in the 2d Sec. of said act, which is declared tobe an amendment of the general law upon the same subject.

Aside from the provisions of this act, the Burlington Company was without any corporate power whatever.

Only under the authority therein contained was it authorized to make the contract of purchase of May 23, 1871.

In the passage of this act, the legislature of Missouri said to railroad companies of other States: "You may come into this State and exercise your corporate powers herein, upon the conditions, and subject to the restrictions and limitations of this act, and such other laws as may be hereafter enacted."

To assert that the Burlington Company did not become subject to that act, is simply to assert in it a want of corporate power, and the invalidity, *ab initio*, of the contract in question.

In the acceptance of this agreement, it voluntarily assumed the obligations of that law under which it assumed to act.

Railroad Co. v. *Maine*, 96 U. S. 499.
Railroad Co. v. *Georgia*, 98 U. S. 359.

The Burlington Company was not at liberty to accept the benefits conferred by the act in question, and at the same time disregard its burdens. If it accepts the one it must likewise accept the other.

Did the legislature intend to say to the Burlington Company, that if you lease the Saint Joseph and Iowa Railroad, which is exempt from taxation, you must pay taxes, or if you arrange to operate that road, notwithstanding the

exemption, you must pay taxes, but if you purchase it, you need not pay such taxes?

To give to the act in question such a construction is to do violence to every reasonable presumption of legislative intendment.

"The true construction of this act is that if the foreign railroad company comes into Missouri by virtue of the authority therein conferred, and either extends its own road into this State, or leases or operates or purchases a road in this State, it shall do so only on condition of being subject to taxation."

Burlington Ry. Co. v. *Counties*, U. S. C. C., 5 Dillon, 289.
Telegraph Co. v. *Lieb*, 76 Ill. 172.
Sess. Acts of Mo., 1870, Sec. 2, pages 90, 91.
Sess. Acts of Mo., 1871, Sec. 1, page 56.

It was competent for the legislature of Missouri to exclude the foreign railroad company entirely, as prior to the passage of the act of 1870 they had done, or they could be admitted upon such terms and conditions as the law-making power of the State saw fit to impose.

Paul v. *Virginia*, 8 Wall. 168.
Fire Ass'n v. *New York*, Vol. 7, page 112 (Sup. Ct. Rep'tr) Nov. 15, 1886.

In the consideration of this case, it can make no difference what property, powers, privileges, franchises and immunities were owned and possessed by the Saint Joseph and Iowa Railroad Company, or what it attempted to transfer by the alleged contract of conveyance.

The question in this case is, what was the Burlington Company authorized to purchase?

In other words, it is not the capacity of one party to sell, which is to be determined, but on the contrary, a question of power on the part of the other to purchase.

By the terms of the act in question, the Burlington Company was authorized to purchase the "*privileges, rights,*

franchises, real estate and other property of the Saint Joseph and Iowa Company."

Waiving for the time the question of the existent power in the last named company, will it be contended by the learned counsel for the plaintiff in error that under such authority to buy, the Burlington Company purchased immunity from taxation?

In the face of the inhibitions of the Constitution of 1865, before cited, will it be seriously claimed that the legislature of Missouri had the constitutional power to authorize the Burlington Company to purchase immunity from taxation? We think not.

The presumption is, that the legislature intended to act within the scope of their constitutional authority; hence the grant of power to purchase the "privileges, rights, franchises, real estate and other property," must be construed to mean such rights, privileges and franchises as the legislature was authorized under the existing organic law to grant.

It was beyond the legislative power to grant immunity from taxation, and it could not therefore be acquired by the Burlington Company.

Louisville and Nashville Co. v. *Palmer*, 109 U. S. 255.

V.

After the adoption of the Constitution of Missouri of 1875, there could be no corporation created capable in law of accepting and enjoying immunity from taxation.

The constitution of 1875, provides that, "The power to tax corporations and corporate property shall not be surrendered nor suspended by act of the General Assembly," and that "*all railroad corporations shall be subject to taxation for State, county, school, municipal and other purposes*," and that no railroad corporation in existence at the time of the existence of this constitution shall have the benefit of any

future legislation except on condition of complete acceptance of all the provisions of this constitution applicable to railroads.

See Secs. 2, 5 and 7, Art. X, Const. of 1875.
See Sec. 21, Art. XII, Const. of 1875.

The Kansas City, St. Joseph and Burlington Railroad Company was organized *on the 30th day of May, 1881*, under the general laws of Missouri. It thereupon became subject to taxation.

The Chicago, Burlington and Kansas City Railway Company was organized under the laws of Iowa.

By articles of consolidation, filed in the office of the Secretary of State, of the State of Missouri, *January 12, 1882*, said companies became merged and consolidated, under the general laws of this State, into one company by the name of The Chicago, Burlington and Kansas City Railway Company, now the plaintiff in error herein.

The 11th section of such articles of consolidation declares that, "This company is organized under the provisions of the general laws of the States of Iowa and Missouri."

Without doubt and beyond question the consolidated company—The Chicago, Burlington and Kansas City Railway Company—now the plaintiff in error herein, came into life and being under the provisions of the constitution of 1875, and under the law of it creation, subject to the payment of State, county and other taxes upon all of its property within the limits of this State.

This proposition can not be disputed, and will not be denied.

The contention of the plaintiff in error is, that thereafter, in and by the deed dated *February 27, 1882*, from Elijah Smith to the Chicago, Burlington and Kansas City Railway Company, it acquired by purchase the immunity from taxation which it now seeks to maintain by this proceeding in error.

While it is contended that Elijah Smith never acquired the immunity in question, yet, in the determination of this

controversy, it makes not the slightest difference what he may have purchased, or what he attempted to sell.

The real question is, what was the Chicago, Burlington and Kansas City Railway Company, by its charter, authorized to buy?

This consolidated charter was granted subject to the provisions of the general laws of the State, and by the authority of the constitution of 1875.

In the acceptance of that charter they assumed the payment of taxes as one of the burdens imposed.

The plaintiff in error contends, that in its purchase from Smith of the putrescent remains of an effete corporation, the obligations of the law have been avoided; the mandates of the constitution have been set at naught, and it has acquired a perpetual exemption from all State and county taxes.

The statement of the proposition results in its overthrow, for it could purchase no immunity excluded by its charter.

Owen v. *St. L. & S. F. Ry. Co.*, 83 Mo. 458.

Louisville & Nashville R. R. Co. v. *Palmer*, 109 U. S. 255.

Memphis R. R. Co. v. *Commissioners*, 112 U. S. 617.

Pullman Car Co. v. *Missouri Pacific R. R.*, 115 U. S. 589.

St. Louis & Iron Mountain R. R. v. *Berry*, 113 U. S. 465.

Chesapeake and Ohio Ry. Co. v. *Miller*, 114 U. S. 176.

VI.

The judgment of the Supreme Court of Missouri should be affirmed under the authorities cited and for the reasons given.

It should be affirmed for the additional reason that it involves no federal question in anywise decisive of the issue involved.

The uniform rule of this court is to affirm the judgment of the Supreme Court of the State, although erroneous in relation to the federal questions involved, where such judgment would have been the same, if such federal questions had not been considered.

Susquehanna Boom Co. v. *West Branch Room Co.*, 110 U. S. 57.
Detroit Ry. Co. v. *Guthard*, 114 U. S. 133.
Jacks v. *Helene*, 115 U. S. 288.
Simmerman v. *Nebraska*, 116 U. S. 54.

There are no federal questions involved in this record, but if there were, the above rule is decisive of the case, and the judgment should be affirmed.

JOHN P. BUTLER with
B. G. BOONE,
Attorney General for the State.

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120-569

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY COMPANY, - - - - *Plaintiff in Error,*

vs.

THE STATE OF MISSOURI EX REL. GUFFY, COLLECTOR OF THE REVENUE IN PUTNAM COUNTY, MISSOURI, *Defendant in Error.*

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR DEFENDANT IN ERROR.

B. G. BOONE, Attorney-General, and
E. P. HUSTON,
Attorneys for Defendant in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1886.

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vs.

THE STATE OF MISSOURI, *ex rel.* —— GUFFY, COLLECTOR OF THE REVENUE IN PUTNAM COUNTY, MISSOURI, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF.

I.

The Burlington & Southwestern Railway Company—a corporation created by the State of Iowa, could only purchase a railroad corporation and franchises in Missouri, by permissive legislation of the latter State.

2 Redf. on Railways, (5th Ed.,) 589.

State vs. Bailey, 16 Ind., 46.

Angel & Ames on Corp., 3 Ed., Sec. 121.

The power to *permit* carries with it the power to impose *conditions* upon which permission will be granted. This permission is found alone in section 2, of the act of 1870, printed in full commencing on page 4, of the statement of this case. That section imposes as a condition to such purchase an abandonment of any exemption for taxation. The language of the proviso is "*and provided further*" that if a railroad company of another State shall lease a railroad, the whole or part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its road into this State or through this State, such part of said railroad as is within this State *shall be subject to taxation.*" There are only three ways provided for the corporation to enter the State and operate a railroad: First, the corporation of another State may extend its own line into the State under the general railroad law of the State; second, it may lease a road already built with all of its rights and franchises; third, it may *purchase* a railroad with all its rights and franchises. It will be observed that this act nowhere authorizes the sale or purchase of "*immunities.*" The words used are not apt to describe exemption from taxation, but in addition, language is used expressly *forbidding* the acquisition of such immunity. The State said to the Iowa corporation you may build your railroad into or through this State upon the terms fixed by our general laws, in reference to the creation of railroad corporations under which you are subject to taxation, or you may lease or purchase a railroad already built, with all the franchises of the company owning it, but if you purchase a railroad possessing an immunity from taxation you cannot purchase *that* immunity. To this very reasonable condition the Burlington & Southwestern must be held to have assented. It could not avail itself of part of the act and repudiate the rest by accepting and purchasing under the act. The Burlington *contracted* to pay taxes.

Burlington & Southwestern Railway Co., vs. Putnam, Sullivan and Linn counties, 5 Dillon, Cir. Ct. reports, 289.

This case was decided in the progress and as part of the very *foreclosure proceedings in the Circuit Court of the United States under which plaintiff in error affects to deduce title in this case.*

The case of Scotland County vs. Railroad Company, 65 Mo. 123, was urged in the State Supreme Court as holding a different view. That case was heard on an agreed statement of facts whereby it was admitted that the two railroad companies out of which the defendant in that case arose, were "in pursuance of the general laws of Missouri and Iowa authorizing the *consolidation* of railroads owning, connecting railroad lines in said State, *duly* and *legally consolidated* and formed one company under the corporate name of the Missouri, Iowa & Nebraska Railway Company." Now at that time there was a general law in force in Missouri regulating *consolidations* of domestic and foreign corporations whose *tracks* connected at the State Line as follows:

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That any railroad company organized under the general or special laws of this State, whose track shall at the line of the State connect with the track of the railroad of any company organized under the general or special laws of any adjoining State, is hereby authorized to make and enter into any agreement with such connecting company, for the consolidation of the stock of the respective companies whose tracks shall be so connected, making one company of the two, whose stock shall be so consolidated, upon such terms and conditions and stipulations, as may be mutually agreed between them, in accordance with the laws of the adjoining State in which the road is located, with which connection is thus formed.

SEC. 2. Such consolidation shall not be made, however, unless the terms and provisions thereof shall be approved by a majority of the stock, or the holders of a majority of the capital stock in each of said companies whose stock shall be consolidated, at some meeting called expressly for that purpose, or by the approval of the same by the holders of the same amount of stock in each of said companies, in writing, and signed by them.

SEC. 3. When the terms of said consolidation shall have been agreed upon, as above stated, and approved in one or the other of the modes above set forth, it shall be competent for the boards of directors in each of said connecting companies to carry the same into effect, and adopt by a resolution a new corporate name for the company, which shall be formed by the consolidation, and to call in the certificates of stock then outstanding in each company, and exchange them for stock in the new company, as may have been agreed by the terms of the consolidation; and a copy of the said consolidation agreement and the resolutions of consolidations, and the name adopted for the

new company, shall be filed with the Secretary of State, and shall be conclusive evidence of such consolidation, and of the corporate name of the consolidated conpany; provided, that whenever at any place on the line of this State. two or more railroads in this State are competing for the business, or from any railroad in any adjoining State, and a consolidation of either of such competing roads, with the road in an adjoining State, would diminish or prevent such competition, then, and in such case, consolidation shall not be permitted under this act, and in case any railroad in this State shall hereafter intersect any such consolidated road, said road or roads shall have the right to run their freight cars, without breaking bulk upon said conslidated road, and such consolidated road shall transact the business of said intersecting or connecting road or roads, on fair and reasonable terms; and the same may be enforced by appropriate legislation; and provided further, that the State reserves to itself the right to guarantee to any road that may hereafter be built to any such point, the right to make a fair contract for the transportation of freight and passengers, with such consolidated road, and in case any such railroad company shall consolidate, or attempt to consolidate with a connecting road contrary to the provisions of this act, any person or party aggrieved, may bring action against them, in the circuit court of any county through which such road may pass, which court shall have jurisdiction in the case, and power to restrain by injunction or otherwise.

SEC. 4. Any such consolidated company shall be subject to all the liabilites, and bound by all the obligations of the company within this State which may thus be consolidated with one in the adjacent State, as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the State, and shall be entitled to the same franchises and privileges under the laws of this State, as if such consolidation had not taken place.

Session Acts of Mo., 1869, p. 75.

This law provided for consolidation of domestic and foreign companies. The act of 24th of March, 1870, provided in the first section for consolidation of *home* companies with *home* companies, and the second section provided for and authorized a foreign company to *purchase* a railroad with its franchises, making express provision against the sale of immunity from taxation.

Section 4 of the act of 1869 expressly reserved to such consolidated company all the franchises and priviles of the old company in this State.

This act did not authorize a *sale* but only a consolidation guarded by that act. The act of 1870 provided for a sale, hence the act of the

24th of March, 1870 was inapplicable on the admitted facts of that case and was not mentioned, considered or referred to by counsel or court in that case.

Again in the Scotland county case it was conceded that the defendant in that case *succeeded* to the *exemption*, but it was insisted that the exemption was *repealed* by the adoption of the State Constitution of 1865, and by a subsequent statute, and *that* was the only contention there.

II.

The Burlington and Southwestern could not in any event acquire by conveyance from the Saint Joseph and Iowa Co. any greater rights than the latter possessed. There was no provision in the charter of the latter company, nor in the Branch act of 1868, authorizing it to pledge or mortgage its *immunity* from *taxation*. The only provision in the charter of the Saint Joseph & Iowa Co. having any reference to this is the following in the act of November 5, 1857, which act will be found in full on page — of the printed record:

Dec. 3. For the purpose of further enabling said company to construct, equip and operate said road, they are hereby authorized to pledge the said road, rolling stock, machinery, depots, depot houses and any other property they may possess, *together with the franchise* of said road for the liquidation of any indebtedness said railroad may incur in the construction of said road."

The authority contained in the Branch Railroad Act of 1868 is as follows: "They may borrow money and issue bonds secured by mortgage on such branch road to aid in its construction, and in general may operate, lease, sell or consolidate with any connecting road, distinct and separate from their main line, and in any other way may manage or dispose of such branch as by law they may be authorized with reference to their main line and separate therefrom,"

The immunity from taxation can only be conveyed when clearly authorized by legislation. Unless so clearly authorized it is held to be an immunity personal to the company on which it is conferred and incapable of transfer. The language authorizing the mortgage only authorized a mortgage of the *property* and *franchises*. Immunity from taxation is not thereby described.

Morgan vs. Louisiana, 93 U. S., 223.

Louisville R. R. Co. vs. Palmes, 109 U. S., 244.

Memphis R. R. Co. vs. Commissioners, 112 U. S., 617.

Trask vs. Maguire, 18 Wall (U. S.), 391.

Wilson vs. Gaines, 103 U. S. 417.

Arkansas R. R. Co. vs. Berry, 41 Ark., 436.

State vs. Sherman, 22 Ohio St., 411.

In Morgan vs. Louisiana, *supra*, this court says: "Franchises are positive rights or privileges without the possession of which the road of the company could not be successfully worked. Immunity from taxation is not one of them."

III.

The first companies to occupy the route from Laclede by way of Linneus, in Linn county; Milan, in Sullivan county, and Unionville, in Putnam county, were the Missouri Central and the North Missouri Central. They were organized under the general corporation law of the State; they were purchased by the St. Joe & Iowa Company; their road-bed, right of way aud subscribed capital stock appropriated and used. The Saint Joseph & Iowa never even attempted to construct a foot of road—never even made a preliminary survey.

Mr. Laler, chief engineer of the Burlington & Southwestern Company, was asked the following questions on cross-examination:

Question.—Was any part of the Saint Joe & Iowa built up to June, 1871?

Answer.—No sir; there was not.

Q.—Up to June, 1871, was there any part of the St. Joe & Iowa built or any work done on it?

A.—Not to my knowledge.

The first and only tangible property ever owned by the St. Joseph & Iowa was acquired by its purchase of these companies. Could it, or rather its vendee, the Burlington & Southwestern, use their road-bed, right of way and survey platts, and memoranda, construct its road over precisely the same route, and then elect to say it did not build under the charters of those roads, but will now elect to here proceed under a charter with exemptions. At the time the branch was actually constructed it held three charters:

First—The right of the Burlington & Southwestern to build into the State under section 2 of the act of 24th of March, 1870.

Second—The charter of the North Missouri Central by purchase and deed.

(Neither of these charters contained any exemptions from taxation.)

Three—The St. Joe & Iowa.

Can the company disregard the first and purchase, and by passing it through a corporation *with* exemption extinguish the second and elect to say it will avail itself of the other charter?

Burlington & Southwestern Railway Company vs. Counties, 5 Dillon, Cir. Ct. Rep, 289.

Tomplinson vs. Branch, 15 Wall., 465.

Baltimore vs. B. & O. R. R. Co., 6 Gill, 288.

Campbell vs. Mariette R. R. Co., 23 Ohio Stat., 168.

IV.

The plaintiff in error is not shown to have had any exemption from taxation, except it be claimed through the deed from Elijah Smith, who purchased at the foreclosure sale. In the absence of proof to the contrary it must be assumed that it was subject to taxation.

The Constitution of Missouri of 1865 contained the following provision in addition to that on taxation printed on page — of this brief, to wit.:

ARTICLE X.

SECTION 2. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the General Assembly.

Section 6 of said article 10 of the Constitution of 1865 exempts from taxation certain State and county property and certain other property used for cemeteries, etc.

SECTION 7. All laws exempting property from taxation other than the property above enumerated shall be void.

When the legislature cannot by law exempt a railroad from taxation it cannot authorize a transfer by one company to another of the right of exemption.

Louisville R. R Co. vs. Palmes, 109 U. S, 244.

Elijah Smith could not purchase this immunity and then convey it to the plaintiff in error. That would be equivalent to creating a

new corporation with an exemption then prohibited by the Constitution of the State.

Memphis R. R. Co. vs. Berry et al, 112 U. S., 609.

Owen vs. R. R. Co., 83 Mo., 454.

The Constitution.

Campbell vs. R. R. Co., 23 Ohio St., 168.

IV.

Before the branch act of 1868 was passed the State Constitution of 1865 had been adopted.

Section 16, chapter 11, of that Constitution is as follows:

"No property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools, and such as may belong to the United States, to this State, to counties, or to municipal corporations within this Siate."

The legislature could not then authorize exemption of stock which the St. Joe & Iowa could not have held at the time its charter was granted and which therefore could not have been contemplated by the legislature granting its charter.

V.

The rule in considering laws claimed to abridge the vital power of taxation is one of *strict* construction *against* the claim. It must be so plain there is no reasonable doubt of the grant or it will be disallowed.

Vicksburg R. R. Co. vs. Dennis, 116 U. S., 665.

Under this rule of construction stock subscribed in aid of a branch projected under the act of 1868 is not included in the provisions of the original charter of the St. Joseph & Iowa which exempted the stock of *that compang*. The stock intended to be exempt must be held to be the stock proper of the company. It holds the branch stock not as *owner* but as *trustee* for the branch—it cannot sell it or use it in its general business. It gets no profit from it nor does it assume any liabil ity therefor. An execution against the main line could not be satisfied out of the branch property. Dividends on the branch stock go to branch stockholders. All the main line does is to hold the stock and administer the affairs of the branch as directed by the branch stockholders, and is in legal effect a mere trustee therefor.

Our contention is, that the stock and property of a branch line organized under the act of 1868, is not within the letter or the spirit of the exemption. The subscription is not to the general stock. The stockholder on the branch has no interest in the stock, property, or earnings of the projecting line, nor is the stock liable for its debts; nor has the stockholder in the projecting line any interest in the branch stock, property or earnings. The funds are separate, and they have separate liabities. The attributes or incidents of ownership are absolute power of disposal, the right to use the proceeds, the absolute right to any profits made and the liability for debts created, not one of which attend the branch stock and property so far as the projecting line is concerned. Then upon what theory can it be held within an exemption, which only applies to the stock and property of the St. Joe & Iowa? To all intents and purposes, the "branch" is an independent company.

The attitude of the projecting line is precisely analogous to that of the *counties* and *townships* in the voting and issue of what are known as township railroad aid bonds. The Missouri machinery for ordering the election, casting up the vote and issuing the bonds is done by the county court for and on behalf of the township. Yet it never has been held that such bonds were "county" bonds.

State vs. Clarkson, 59 Mo., 149.

State ex rel- Wilson vs. Garroute, 67 Mo., 465.

The act of 1868 provides that these so-called branches may be sold separately from the main line. Will it be contended that upon such sale the franchise and immunity are separable, part remaining with the old company and part going with the branch and that the branch when it becomes a separate road has power to declare other branches with such powers?

VII.

The St. Joe & Iowa was incorporated in 1857. Up to May 22, 1871, it had shown no signs of life except that when galvanized by the expectatation of fifty thousand dollars it projected a branch before it had any main line—even before it had thrown a shovel full of earth in the way of constructing its "main line." Its officers simply *speculated* on its franchises, and the so called *main line* from St. Joseph to Unionville *never has been built, no part it, not even a line located*—it simply to this day remains what it was in 1871—a *main line on paper*. The

whole transaction was a scheme to get the property, right of way and franchises of the companies organized under the general law of the State and which then occupied the entire route, then extinguish *their* charters and buy like merchandise the franchises which the State had confided to the St. Joseph and Iowa to be exercised for the public good. There is not, nor ever was any statute of Missouri, authorizing the sale and transfer of corporate franchises apart for some tangible property. The St. Joseph had nothing except franchises to sell, until it purchased the companies organized under the general law. We contend that, if the property of those companies was necessary to enable it to sell to the Burlington & Southwestern, then the franchises and liabilities of such companies are not extinguished, but survive and dominate the property and determine its *status* as to taxation.

VI.

The record in this case does not show that any federal question was decided by the State court. That the St. Joe & Iowa originally had the immunity, was conceded. There was nothing to prevent the Burlington & Southwestern Company from purchasing the St. Joe & Iowa under the act of 24th of March, 1870. It did so voluntarily purchase, and thereby relinguished any claim the St. Joe & Iowa had. That act certainly did not *impair* any contract.

> Adams vs. Burlington & Missouri River Railway Co., 112 U. S., 678.

In determining, whether the Burlington & Southwestern Company was authorized to mortgage the immunity for taxation, the State court only applied the rule so after announced by this court, that immunity for taxation will only pass to another company when expressly authorized by the legislature, simply applied the rules of construction common to such conveyances No law of the State was sustained or involved to defeat an alleged contract, but the court simply determined under the evidence that defendant never had acquired such immunity.

> Susquehanna Broom Co. vs. West Branch Broom Co., 110 U. S, 69.
>
> Chouteau vs. Gibson, 111 U. S., 400.
>
> Board of Supervisors vs. Santa Cruz R. R Co, 111 U. S., 456.
>
> San Francisco vs. Scott 111 U. S., 593.
>
> Grame vs. Ins. Co., 112 N. S., 716.

The decision simply construes the act of 24th of March, 1870. That

construction impairs no contract or supposed contract, but simply construes it as the only authority for the purchase of the St. Joseph & Iowa by the Burlington & Southwestern. It was clearly competent for the State to impose conditions to its consent to such purchase, the decision holds that it did impose a condition of renunciation of exemption from taxation. The legal result follows, that if the company availed itself of the provisions of that statute it assented to the conditions and in all this there is no federal question.

B. G. BOONE, Attorney-General,
And S. P. HUSTON,
For Respondent.

120-369

FILED
JAN 3 1887
JAMES H. MCKENNEY
CLERK

No. 1244.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY COMPANY, - - - - *Plaintiff in Error,*

vs.

THE STATE OF MISSOURI EX REL. GUFFEY, COLLECTOR, ETC., PUTNAM COUNTY, MO., - *Defendant in Error.*

ABSTRACT AND STATEMENT OF DEFENDANT IN ERROR.

B. G. BOONE, Attorney-General, and
S. P. HUSTON.
Attorneys for Defendant in Error.

—IN THE—

SUPREME COURT OF THE UNITED STATES.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

No. ——

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI, *ex rel.* —— GUFFEY, COLLECTOR OF THE REVENUE IN PUTNAM COUNTY, MISSOURI, DEFENDANT IN ERROR.

HISTORY OF THE CASE.

This is a suit for State, county and township taxes, instituted under a law of Missouri authorizing their collection thereby. The cause was tried in the State circuit court where there was judgment for the plaintiff. The defendant therein appealed from that judgment to the su-

after enumerating with minute particularity the property ordered sold, says, "with all the rights, privileges and franchises relating thereto."

Printed record, p. —

Under this decree there was a sale and conveyance containing the same language used in the decree in discribing what was conveyed. This conveyance was made to Elijah Smith, and the conveyance will be found on page — of the printed record.

There is involved in this controversy some ten or twelve miles of road which is called "main line"—it extended from where the railroad enters the State of Missouri to near Unionville.

It was mortgaged under the same powers and using the same language as used in the branch mortgage. The mortgage was foreclosed and decree, sale and conveyance, to Elijah Smith made containing same descriptive words so far as concerns the issues here presented.

Afterward Elijah Smith sold and conveyed to the present defendant by deed dated the 27th day of February, 1882, and under this deduction of title the plaintiff in error bases the claim to exemption from these taxes which are admitted to be substantially State and county taxes.

The defendant in error contends that the only legislative authority enabling the Saint Joseph & Iowa Company to sell and the Burlington & Southwestern to purchase was found in the act of 1870, which is as follows:

"SEC. 2. That said chapter is hereby amended by an additional section, to wit: Section 57. Any railroad company heretofore incorporated or hereafter organized in pursuance of law may, at any time by means of subscription to the capital stock of any other railroad company or otherwise aid such company in the construction of its railroad within or without the State, for the purpose of forming a connection of the last mentioned with the road owned by the company furnishing such aid, or any such railroad company which may have built its road to the boundary line of the State may extend into the adjoining State, and for that purpose may build or buy or lease a railroad in such adjoining State and operate the same, and may own such real estate and other property in such adjoining State as may be convenient in operating such road; or any railroad company organized in pursuance of the laws of this or any State or of the United States, may lease or purchase all or any part of a railroad with all its privileges, rights, franchises, real estate and other property, the whole or a part of which is in this State, and constructed, owned, or leased by any other com-

pany if the lines of the road or roads of said companies are continuous or connected at a point either within or without this State, upon such terms as may be agreed upon between said companies respectively; or any railroad company, duly incorporated and existing under the laws of an adjoining State or of the United States may extend, construct, maintain and operate its railroad into and through this State, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this State upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and provisions of the laws of this State concerning railroad corporations as fully as if incorporated in this State: provided, that no such aid shall be furnished, nor any purchase, lease, sub-letting, or arrangements perfected until a meeting of the stockholders of said company or companies of this State, party or parties to such agreement, whereby a railroad in this State may be aided, purchased, leased, sub let or affected by such arrangement shall have been called by the directors thereof, at such time and place, and in such manner as they shall designate, and the holders of a majority of the stock of such company, in person or by proxy, shall have assented thereto, or until the holders of a majority of the stock of such company shall have assented thereto in writing, and a certificate thereof signed by the president and secretary of said company or companies, shall have been filed in the office of the Secretary of State; and provided, further, that if a railroad company of another State shall lease a railroad, the whole or a part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its railroad into this State or through this State, such part of said railroad as is within this State shall be subject to taxation, and shall be subject to all regulations and provisions of law governing railroads in this State, and a corporation in this State leasing its road to a corporation of another State shall remain liable as if it operated the road itself, and a corporation of another State being the lessee of a railroad in this State, shall likewise be held liable for the violation of any of the laws of this State, and may sue and be sued, in all cases and for the same causes, and in the same manner as a corporation of this State might sue or be sued if operating its own road; but a satisfaction of any claim or judgment by either of said corporations shall discharge the other; and a corporation of another State being the lessee as aforesaid, or extending its railroad as aforesaid, into or through this State, shall establish and maintain an office or offices in this State, at some point or points on the line of the road so leased or constructed and operated, at which legal process and notice may be served as upon railroad corporations of this State."

preme court of the State where the judgment of the lower court was affirmed, and the defendant in the State courts sued out a writ of error from this court. The contention on the part of the plaintiff in error is that by virtue of certain charter provisions it is exempt from the payment of State, county and township taxes.

This claim of exemption must be deduced, if at all, through the following legislation, conveyances, mortgages and foreclosures, to wit:

1. In 1837 the Louisiana and Columbia Railroad was incorporated, and section 24 of its charter contains the following clause, which portion alone is pertinent to this contention, to wit: "Every person who shall cease to be a shareholder shall also cease to be a member of said company, and the stock of said company shall be exempt from all State and county taxes."

Sess. Acts of Missouri, 1836, p. 247.

2. In 1847 the Hannibal and St. Joseph Railroad Company was chartered, and section 4 of the act creating it, among other things, provides such company "shall in all things be subjected to the same restrictions and entitled to all the privileges, rights and immunities which were granted to the Louisiana and Columbia railroad company."

Printed Rec. p. —, Sess. Acts of Missouri, 1847, p. 156.

This far there is no contention. We concede that, however open to criticism such indirect methods of special legislation may be, yet that thereby the St. Joseph and Iowa Railroad Company became vested with the immunity from taxes such as sued for in this case.

This company did nothing towards building any railroad until in 1868. The legislature passed an act entitled an act to aid the building of branch railroads.

Sess. acts of Mo., 1868, p. —

Under the provisions of this act, on March 25, 1871, this *paper* company which had *no* road, *main* or otherwise, had not commenced the construction of any road, had not even *located* any road or main line, projected a so called *branch* extending from Unionville, in Putnam county, Missouri, southward by way of Milan, in Sullivan county, and Linneus, in Linn county, to Lexington, Missouri. The resolution projecting such branch will be found on page — of the printed record.

Afterwards, by deed dated the 23d day of May, 1871, but which was not acknowledged by the granting company till the 19th day of October, 1871, the St. Joseph and Iowa Railroad Company attempted

to convey all of its property, rights, franchises, privileges and immunities to the Burlington and Southwestern Railway Company, an Iowa corporation. There is no provision anywhere in the charter of the St. Joseph and Iowa Company authorizing it to sell its property and franchises.

In this conveyance there is no mention or description of this branch. After this conveyance on the 1st day of April, 1872, the Burlington and Southwestern Railway Company executed a deed of mortgage on said branch for and on behalf thereof, which recites a power to mortgage the "*corporate property* and *franchises*" of the branch, and the description of what is conveyed after a minute and particular enumeration of all the property conveyed, enumerates "all the *rights*, *privileges* and *franchises* relating thereto."

This mortgage appears in full on page — of the printed record. The only authority to mortgage contained in the St. Joseph and Iowa charter is the following section in the act amending the charter of the St. Joseph and Iowa and which appears in full on page — of the printed record.

"SEC. 3. For the purpose of further enabling said company to construct, equip and operate said road, they are hereby authorized to pledge the said road, rolling stock, machinery, depots, depot houses and any other property they may possess together with the franchise of said road, for the liquidation of any indebtedness said railroad company may incur in the construction of said road."

The act of 1868, under the authority of which this branch was projected, contains no authority except in these words: "They may borrow money and issue bonds secured by mortgage on such branch road to aid in its construction."

There is nowhere any authority to pledge or mortgage the immunity taxation unless it be contained in the foregoing provisions.

This mortgage was foreclosed in the circuit court of the United States for the western district of Missouri. While such foreclosure proceedings were pending in that court, Putnam, Sullivan and Linn counties, in Missouri, filed an application in that court for an order to pay taxes on this property. By agreement the receiver presented a bill praying for an injunction restraining the collection of the taxes on same grounds of exemption here made. This was by agreement treated as an original bill and upon the hearing before a full bench the injunction was refused and the exemption repudiated. This case is reported in 5th Dillon's C. C. reports, p. 289.

Afterward a decree ordering a sale was made in said court which

after enumerating with minute particularity the property ordered sold, says, "with all the rights, privileges and franchises relating thereto."

Printed record, p. —

Under this decree there was a sale and conveyance containing the same language used in the decree in discribing what was conveyed. This conveyance was made to Elijah Smith, and the conveyance will be found on page — of the printed record.

There is involved in this controversy some ten or twelve miles of road which is called "main line"—it extended from where the railroad enters the State of Missouri to near Unionville.

It was mortgaged under the same powers and using the same language as used in the branch mortgage. The mortgage was foreclosed and decree, sale and conveyance, to Elijah Smith made containing same descriptive words so far as concerns the issues here presented.

Afterward Elijah Smith sold and conveyed to the present defendant by deed dated the 27th day of February, 1882, and under this deduction of title the plaintiff in error bases the claim to exemption from these taxes which are admitted to be substantially State and county taxes.

The defendant in error contends that the only legislative authority enabling the Saint Joseph & Iowa Company to sell and the Burlington & Southwestern to purchase was found in the act of 1870, which is as follows:

"SEC. 2. That said chapter is hereby amended by an additional section, to wit: Section 57. Any railroad company heretofore incorporated or hereafter organized in pursuance of law may, at any time by means of subscription to the capital stock of any other railroad company or otherwise aid such company in the construction of its railroad within or without the State, for the purpose of forming a connection of the last mentioned with the road owned by the company furnishing such aid, or any such railroad company which may have built its road to the boundary line of the State may extend into the adjoining State, and for that purpose may build or buy or lease a railroad in such adjoining State and operate the same, and may own such real estate and other property in such adjoining State as may be convenient in operating such road; or any railroad company organized in pursuance of the laws of this or any State or of the United States, may lease or purchase all or any part of a railroad with all its privileges, rights, franchises, real estate and other property, the whole or a part of which is in this State, and constructed, owned, or leased by any other com-

pany if the lines of the road or roads of said companies are continuous or connected at a point either within or without this State, upon such terms as may be agreed upon between said companies respectively; or any railroad company, duly incorporated and existing under the laws of an adjoining State or of the United States may extend, construct, maintain and operate its railroad into and through this State, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this State upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and provisions of the laws of this State concerning railroad corporations as fully as if incorporated in this State: provided, that no such aid shall be furnished, nor any purchase, lease, sub-letting, or arrangements perfected until a meeting of the stockholders of said company or companies of this State, party or parties to such agreement, whereby a railroad in this State may be aided, purchased, leased, sub let or affected by such arrangement shall have been called by the directors thereof, at such time and place, and in such manner as they shall designate, and the holders of a majority of the stock of such company, in person or by proxy, shall have assented thereto, or until the holders of a majority of the stock of such company shall have assented thereto in writing, and a certificate thereof signed by the president and secretary of said company or companies, shall have been filed in the office of the Secretary of State; and provided, further, that if a railroad company of another State shall lease a railroad, the whole or a part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its railroad into this State or through this State, such part of said railroad as is within this State shall be subject to taxation, and shall be subject to all regulations and provisions of law governing railroads in this State, and a corporation in this State leasing its road to a corporation of another State shall remain liable as if it operated the road itself, and a corporation of another State being the lessee of a railroad in this State, shall likewise be held liable for the violation of any of the laws of this State, and may sue and be sued, in all cases and for the same causes, and in the same manner as a corporation of this State might sue or be sued if operating its own road; but a satisfaction of any claim or judgment by either of said corporations shall discharge the other; and a corporation of another State being the lessee as aforesaid, or extending its railroad as aforesaid, into or through this State, shall establish and maintain an office or offices in this State, at some point or points on the line of the road so leased or constructed and operated, at which legal process and notice may be served as upon railroad corporations of this State."

The defendent in error read in evidence the articles of association of the North Missouri Central Railroad Company, as follows:

STATE OF MISSOURI—SS.

I, Michael K. McGrath, Secretary of State, of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of the articles of association of the North Missouri Central Railroad Company, and of the affidavit of three of the directors of said company thereto attached, filed February 10, 1868, as the same appears on file, as the law directs in this office.

In testimony whereof, I have hereunto set my hand and affixed the great Seal of the State of Missouri. Done at office in the City of Jefferson, this fourteenth day of July A. D. eighteen hundred and eighty-five.

MICHL. K. McGRATH,
Secretary of State.

ARTICLE I.

We, G. D. Burgess, A. W. Mullins, Samuel Thorn, A. D. Christy, John W. Rudder, Marion Cave and J. Seaman of Linneus, in the county of Linn and State of Missouri, and Joseph Combs, B. F. Northcott, The. McMullins, Joel H. Wilkerson, F. R. Green and T. T. Easley, in said county and State aforesaid, and such other persons as may sign these articles of association, do by these presents associate ourselves together for the purpose of construction, maintaining and operating a railroad for the public use from the town of Linneus in Linn county, Missouri, to intersect the Brunswick and Chillicothe Railroad in section thirty-six (36) Congressional, township fifty seven (57) of range twenty two (22), one half mile west of the range line dividing ranges twenty-one and twenty two in said county of Linn in the State of Missouri, to be called and known as North Missouri Central Railroad Company, the same to be constructed under said name for one hundred years from this date.

ARTICLE II.

Said road is to be about fourteen miles in length when completed, and is to run through the county of Linn, and the capital stock of which shall be two hundred thousand dollars, the number of shares of which said capital stock is comprised shall be two thousand, each one hundred dollars hereto subscribed representing one share of said capital stock.

ARTICLE III.

The persons hereinbefore named in these articles of association shall act as directors of said company until the first Tuesday in March, 1868, and until their successors are duly elected and qualified.

ARTICLE IV.

We further agree to take and subscribe the number of shares of stock towards the construction of said railroad, and for the use and benefit of said company for the purpose herein expressed, set opposite our names respectively, and bind ourselves to pay the same whenever, in the opinion of said directors, or their successors in office, it may be necessary for the construction of said road. Given under our hands at Linneus, Missouri, on this the —— day of January, A. D. 1868.

NAMES.	NO. SHARES.
G. D. Burgess, Linneus	10
A. W. Millins, Linneus	10
D. W. Russell, Linneus	10
Samuel Thorns, Linn	20
F. R. Green, 400 acres of land	20
Thomas McMullin, 400 acres of land	20
Geo. W. Thompson	5
A. D. Christy, Linneus	5
John W. Rudder, in land	5
Marion Cove, half in land	10
G. K. Denbo, 160 acres of land	8
Joseph Combs in land	10
Geo. W. Stephens, $500 in money and 500 in land	10
T. T. Easley	5
J. Seaman, Linneus, in land	10
Milton Goldman, Linneus, in land	5
B. S. Northcott, in land	1
J. Cundiff	1
R. J. Clark	1
G. W. Sytepleter	2
J. B. Augustus	4
John R. McEfee	1
B. F. Northcott, in land	10
G. S. Nicholy	2
D. J. Green	1
J. C. Phillips	1
H. Wanck, 40 acres of land providing the road comes to Linneus	
J. P. Lambert	2

John Detroiler	2
R. E. Sidebottom	5
J. H. Wilkerson, shares in land or money	10
P. B. Molley	2
B. F. Lytle	1
W. H. Garrett, 40 acres land	5
Wm. McClanahan, 40 acres of land	4
H. C. Bailey, in labor	1
R. W. Mahugh money	1
H. C. Prewitt, money	5
H. C. Prewitt, land	5

We, the undertigned directors as hereinbefore stated in the foregoing articles of association do hereby certify that seven hundred dollars has been paid into the treasurer of said board of directors, the aforesaid amount of seven hundred dollars being five per cent. on fourteen thousand dollars, or one thousand dollars per mile of said road hereinbefore proposed to be built in Linn county, Missouri.

Given under our hands this 3d day of February, A. D. 1868.

FLEMON R. GREEN,
JOHN W. RUDDER,
JOSEPH COMBS.

Subscribed and sworn to before me this 3d day of February, 1868.

In testimony whereof, I have this day hereunto signed my name and affixed my notorial seal. Done at office in Linneus, Linn county, Missouri.

[SEAL.] B. F. NORTHCOTT,
Notary Public.

Filed Febauary 10 1868.

FRANCIS RODMAN,
Secretary of State.

Under the laws of Missouri (1 Wag. Stat., p. 303, Sec. 13.) this company on the 20th day of May, 1869, extended its line northward from Linneus by way of Milan in Sullivan county, and Unionville in Putnam county, to the Iowa line.

The resolutions are as follows:

STATE OF MISSOURI—SS.

I, Michael K. McGrath, Secretary of State, of the the State of Mssouri, hereby certify that the annexed pages contain a full, trub and complete copy of the resolution of the Board of Directors of the North Missouri Central Railroad Company extending the line of said road, filed June 14, 1869, as the samq appears on file and record, as the law directs, in this office.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the State of Missouri. Done at office, in the City of Jefferson, this seventh day of February, A. D. eighteen hundred and eighty-five.

MICHL. K. McGRATH,
Secretary of State.

OFFICE OF THE NORTH MISSOURI CENTRAL RAILROAD COMPANY,
LINNEUS, MO., May 20, 1885.

At a called meeting of the Board of Directors of this Company, with Vice-President J. H. Wilkerson in the chair, and H. C. Prewit, Secretary, and B. F. Northcott, G. W. Stephens, Geo. W. Thompson, Jeremiah Cundiff, A. D. Christy, James Beaty and Joseph Combs, members, present The object of the meeting was to extend the line of this road northward to the State line, whereupon the following resolution amending the resolution of this board was passed at its meeting held on the 7th day of April, 1869, was unanimously adopted:

Resolved, By the Board of Directors of the North Missouri Central Railroad Company (more than two thirds of the Directors concurring herein), that the line of said road be, and the same is, hereby extended from its present northern terminus, at the town of Linneus, northward by way of Milan, in Sullivan county, and Unionville, in Putnam county, to the State line in said Putnam county, in the State of Missouri, a distance of about fifty-five miles; and that the adoption of this resolution be certified to the Secretary of State, according to the act of the legislature, approved March 4, 1869.

A true copy from the record of the proceedings of said Board of Directors.

ATTEST:

H. C. PREWITT,
Secretary.

STATE OF MISSOURI, COUNTY OF LINN.

We, Benjamin F. Northcott, Henry C. Prewitt and A. W. Mullins, members of the Board of Directors of North Missouri Central Railroad Company, upon oath state that more than one thousand dollars for every mile of the railroad purposed to be built as designated in the foregoing resolution extending the line of said road, has been in good faith subscribed and more than five per cent. in cash paid thereon, and that it is intended in good faith to construct and operate the said road.

B. F. NORTHCOTT,
H. C. PREWITT,
ALEX. W. MULLINS.

Subscribed and sworn to before me, a notary public, within and for said Linn county. In witness whereof I have hereunto subscribed my name and affixed my notarial seal, at office in Linneus, this 7th day of June, 1869.

[SEAL.] B. J. NORTHCOTT,
Notary Public.

Filed June 14, 1869.

FRANCIS RODMAN,
Secretary of State.

Similar articles of incorporation were read, incorporating the Missouri Central Railway Company which was organized for the purpose of constructing and operating a railroad from Laclede, in Linn county, Missouri, southward, to an intersection with another railroad. This company afterward by resolution similar to that passed by the North Missouri Central, extended its line southward to Lexington, Mo.

These corporatione were organized under the general corporation law of Missouri, and were subject to taxation.

Under the township aid law of Missouri, various townships in Linn county voted bonds to these two roads to the amount of $90,000, as shown by the orders making subscriptions, which are printed in full in the record at pp. —

The township aid with the other stock subscriptions as shown by the articles of incorporation, amounted to about $150,000, all of which was spent in grading the road and fencing right of way from Laclede south and northward to Linneus, and in making surveys north from Linneus to the Iowa line. This was all done before this so-called branch was even projected. Afterwards, before even any survey of the so-called branch was made there, two companies through their proper officers, duly authorized, did by deeds of date May 31, 1871, "sell, convey, assign, transfer and deliver their road-bed and right of way" as far as owned by them, with all their "rights, privileges and franchises, and property, real, personal or mixed, to the St. Joseph and Iowa Railway Company, for the benefit of this so-called branch. The road bed, right of way and other property of these companies were the first tangible property owned by this branch, and afterwards the branch was constructed over the precise route fixed by the charter of these other companies, that is from the Iowa line by way of Unionville, in Putnam county, Milon, in Sullivan county, Linneus and Laclede, in Linn county, and it appropriated and used the right of way and road-bed graded faom Linneus south. It is true no grading had as yet been done in Putnam county by these selling companies, but they had begun the construction of their road, bonds had been voted to them and

their articles of association, which under the law was their charter, had already occupied the identical route over which the branch was afterwards constructed. The defendant in error insists that these companies with all their property could not be purchased and extinguished, but that being the first franchise to cover the route it must determine the *status* of the property as to taxation.

B. G. BOONE,
Attorney-General,
And S. P. HUSTON,
For Defendant in Error.

120-569

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1886,

MONDAY, JANUARY 3, 1887.

THE CHICAGO, BURLINGTON & KANSAS CITY RAILWAY CO.,
Plaintiff in Error,

vs.

THE STATE OF MISSOURI EX REL., JOHN F. GUFFEY, COLLECTOR OF THE REVENUE FOR PUTNAM COUNTY,
Defendant in Error.

No. 1244.

ERROR TO THE SUPREME COURT OF MISSOURI.

PETITION FOR REHEARING.

BECAUSE OF MISTAKE OF FACTS.

L. T. HATFIELD,
For Plaintiff in Error.

"Standard" Printing House, Milan, Mo.

— IN THE —

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1886,

MONDAY, JANUARY 3, 1887.

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Plaintiff in Error,
vs.
THE STATE OF MISSOURI EX REL., JOHN F. GUFFEY, COLLECTOR OF THE REVENUE FOR PUTNAM COUNTY,
Defendant in Error.

No. 1244.

ERROR TO THE SUPREME COURT OF MISSOURI.

PETITION FOR REHEARING.

Now at this day comes the plaintiff in error and presents this its petition, praying for a rehearing in this cause, and respectfully asks this court to reconsider its opinion; for the sole reason that the court has mistaken the facts in the case, and therefore the law declared is inapplicable.

In the beginning of its opinion this court states:

"The judgment which this writ of error brings up for review affirms the liability to taxation, in Missouri, for state and county purposes, of what was formerly known as the Central North Missouri Branch of the St. Joseph and Iowa Railroad, more recently named the Linneus Branch of the Burlington and South Western Railway Company, and now owned by the Chicago, Burlington and Kansas City Railroad Company, a corporation organized under the laws of Missouri."

That is a mistake. By following the reference here given to the printed record, a self correcting medium will be found.

At pp. 3, 4 and 5, will be found the original petition setting out the cause of action in the circuit court of Putnam county, Missouri, a reading of the petition will disclose the fact, that it describes one piece of railroad, while it does not in terms say so, the line described is substantially nineteen miles in the aggregate. Of this, twelve miles is *Main Line*, and seven miles Branch Line.

At pp. 7-9 will be found the answer of the defendant corporation upon which the cause was tried. In the last paragraph on page 8, printed record, it is stated:

"Defendant states that it is the line of railroad above mentioned, including the Main And Branch Line running through said Putnam county, that is sought to be charged with taxes in this action;"

The bill of exceptions in the trial court is found pp. 14-118, inclusive. It will be seen pp. 15-16 that the state of Missouri, made proof of the assessment and levy of taxes as an entirety. At p. 17 the defendant Railway Company began its defense, by taking its record in the order of its creation.

1st. P. 17-19, the charter of the St. Joseph and Iowa Railroad Company.

2d. Pp. 19-20, charter Hannibal and St. Joseph Railroad Company.

3d. Pp. 20-27, charter of Louisiana and Columbia Railroad Company.

4th. Pp. 28-30, amendments to charter of St. Joseph and Iowa Railroad Company.

5th. Pp. 30-31, resolution to build Central North Missouri Branch of the St. Joseph and Iowa Railroad, March 25, 1871.

6th. Pp. 32-36, deed of St. Joseph and Iowa Railroad Company conveying, property, rights, privileges and franchise to the Burlington and South Western Railway Company, May 23d, 1871.

7th. Pp. 37-42, articles incorporation of the Burlington and South Western Railway Company, July 12, 1871.

8th. Pp. 43-52, mortgage of branch line showing change of name, etc.

9th. Pp. 53-60, mortgage of the *Main Line*.

10th. Pp. 60-72, order appointing receiver pending foreclosure of mortgages on the respective lines, together with decrees of foreclosure. That of the main line being at pp. 69-72. The specific description of the property being found in the paragraph beginning near the bottom of p. 70, continuing on to p. 71.

11th. At pp. 73-78, will be found the Master's Deeds to the branch line.

12th. At pp. 79-84, will be found the Master's Deeds and approval of the sale of the main line.

13th. At pp. 85-87, the deed from the trustee who purchased for the bondholders, conveying the property to the Chicago, Burlington and Kansas City Railway Company, defendant in this action.

14th. At pp. 87-99, is the oral evidence as to construction. That was all the evidence on the part of the defendant. Pages 99-115, embrace the evidence of the state in rebuttal, at

the conclusion of which, see near top of p. 115;

"S. P. Huston, attorney for plaintiff, in express terms, withdrew all exceptions and objections to the testimony offered by the defendant in this behalf, except as to its legal effect and submitted the case upon its merits, waiving all objections made during the trial as to the admissibility of testimony offered by defendant."

At pp. 115-116, will be found the instructions asked by the defendant Railway Company, the state did not ask any.

It will thus be seen that the greater part of the line in controversy in this cause is *Main Line.* It will be observed that the action was brought, defended and considered by the trial court, as one piece of property. At no place in the record can there be found any objection whatever to the legality of the organization of the St. Joseph and Iowa Railroad Company, the projection of the branch line, or the construction of all of it, except as evidenced by the fruitless effort to show a prior *location* by another company, of a line running through the country traversed by the branch line. See pp. 99-115, and as stated, counsel for the state waived the technical objections he had made.

By giving defendant's instruction, number one, p. 115, the trial court recognized the line as an entirety, equally entitled to the immunity, provided, such immunity could be conveyed at all. By refusing instruction number two, pp. 115-116, that court declared the law to be so that the immunity did not pass under the deed of May 23, 1871, pp. 32-36, or in any other manner. It was upon that ground that the case was appealed to the supreme court of Missouri. The theory upon which the cause was tried was based upon the law laid down by the Supreme Court of Missouri in *State ex rel St. Joseph & Iowa R. R. Co. vs Sullivan County, Mo., 51 Mo., 522; Cooper et al vs Sullivan County Mo. et al, 65 Mo., 542; Scotland County Mo. vs Mo., Ia. & Neb. R. R. Co., 65*

Mo., 135; *Daniels, vs St. L., K. C. & N. R. R. Co., 62 Mo., 43*; *Atlantic & Pacific R. R. Co. vs St. Louis, 66 Mo., 228*; which was then considered the established rule of property in this case. In State ex rel. St. Jo. & Ia. R. R. Co., and Cooper *et al* vs Sullivan Co., *supra*, the power of direct taxation was invoked and enforced by the Supreme Court of Missouri, in an amount exceeding principal and interest, Half a Million Dollars in support of this same branch line whose only right to exist and have those powers is contained in the charter of the St. Joseph and Iowa Railroad Company. It was not then nor is it now believed by counsel for plaintiff in error, that the power to cause the levy and collection of a direct tax from the people, as was done in those cases, should be considered of any less force and importance than a provision that merely withholds money the people never did have, and which they could not possibly have had without the construction of the road.

There was no point made by counsel for the state or county, either in the Trial or Supreme Court of Missouri, as to separate existence of the branch line and it was only when the opinion of that court was announced that the views there enunciated were ever heard of. There never was any separate organization or management, no *divorce*:

The Supreme Court of Missouri, in its opinion however, in sub-division II, pp. 123-5, takes up the question of the effect of the sale of the St. Joseph and Iowa R. R. Co., to the Burlington and South Western Ry. Co., see deed, pp. 32-36, and there announced the doctrine that this plaintiff in error especially complains of. See assignment of errors, brief pp. 25-26; and which caused the suing out of the writ of error in this behalf.

The discussion of the Branch line question in the brief filed here by plaintiff in error pp. 31-40, was merely incidental to the main question and drawn out by the opinion of the Supreme Court of Missouri. But the material question was

the views of the Supreme Court of Missouri, in said sub-division II, printed record pp. 123-5 *supra*, and is presented we think very forcibly in the brief of plaintiff in error pp. 40-51, inclusive.

If the construction of section two of the act of March 1870, (Session acts of Missouri, 1870, page ninety) by the Supreme Court of Missouri is correct, then our whole structure falls of its own weight, and our claims are groundless. Upon the other hand if the construction of said section by that court is erroneous, then the judgment should be reversed and the cause remanded regardless of the branch line question, as it is impossible to fix the proper division of the property if division be necessary, in the present state of the record, and its condition does not appear to be the fault of either of the parties as they tried it in the light that was then before them.

The opinion of this court clearly holds that the main line and all branches built solely under the provisions of the charter of the St. Joseph and Iowa Railroad Company, shall be exempt in the hands of the present owner. The record here shows that there is both main line and branch line in this particular case, and as it is a fact that more than two-thirds of it is main line, it is considered good ground for asking a rehearing and reconsideration of your opinion. There are five other counties interested and in four of them suits are now pending. Therefore a full discussion and determination of the true tenor and effect of the act of March 24, 1870, *supra*, by this court will practically determine all the matters in controversy, in fact there are agreements in two counties to abide the decision of this court upon the construction put upon that section by the Supreme Court of Missouri. A failure therefore, to consider that matter will not only do great and irreparable injury to the plaintiff in error by requiring it to pay that for which

it is not liable, but make it necessary to bring other causes here to obtain the decision of such question.

It must be that this court was misled as to the facts in the case, by the language of the Supreme Court of Missouri, in the last two lines of the statement of the case near the bottom of p. 122, printed record, thus:

"*The taxes in suit were assessed upon this branch road property.*"

The record shows a different state of facts. Those words must have been a fragment of some memorandum from some part of the case having reference to the branch line.

Your petitioner also desires to call attention to the language of this court, at the beginning of the last paragraph on page two of your opinion.

"*As perhaps every railroad company, organized under the laws of the state prior to the adoption of the constitution of 1865. had general authority to construct branch roads.*" etc.

This matter is discussed at p. 34, brief of plaintiff in error. Few companies had general power to build branches, in most cases the charter contained the points of intersection with the main line and the names of the principal points on the proposed branch. Certainly unless the general direction of a line were given and at least one terminal point fixed, it would have been impracticable to have exercised the right of Eminent Domain or made any record authorized by any known law touching the existence of a previously undescribed branch line.

It was this defect that was sought to be eliminated by the act of March 21 1868, in the nature of a general amendment to the charter of

"Any railroad company in this state authorized by law to build branches,"

And was fully sustained in the cases against *Sullivan County Mo., supra*, and such legislation is fully sustained by the cases cited, pp. 29-30, brief of plaintiff in error.

Prior to the adoption of the constitution of Missouri of 1875, a corporation could have been organized with Millions of Dollars capital at an expense of not more than Five Dollars, assuredly the resolution to build the branch line including authentication, cost as much as that. If it brought such corporations under the provisions of the general statutes governing railroads it was a work of supererogation.

It was the resolution of the Board of Directors of the main line, *Their Will* that gave life to the branch line, all the power was in the parent company, no new stock is provided for, the law contained in the charter governs or the Branch Aid Act of March 21, 1868, is a nullity. It can not be taken up piecemeal.

Upon no theory would persons be permitted to vote for directors and officers of a corporation other than that they were stockholders in such corporation.

It would be competent and proper to construct the main line in divisions, making contracts and fixing the liabilities of each separately, and in that way secure stock subscriptions and other aid that could not be obtained in any other way, and it would be a matter of no concern to any one but those directly interested. The state offered inducements to secure a railroad and that is all it expected or could wish.

Wherefore and for the reasons given the plaintiff in error asks this court to grant it a rehearing in this cause, or that the opinion be reconsidered, to the end that full and final justice be done in the premises. Hereby giving present assent to such terms as the court may prescribe with reference to the cost to this time.

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY COMPANY, *Plaintiff in Error*,

By, L. T. HATFIELD, *Attorney*.

A. W. MULLINS, *Associate Counsel*.

120-569

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE CHICAGO, BURLINGTON & KANSAS CITY RAILWAY COMPANY, Plaintiff in Error,

against

THE STATE OF MISSOURI *ex rel.* JOHN F. GUFFEY, COLLECTOR OF THE REVENUE FOR PUTNAM COUNTY, Defendant in Error.

ERROR TO THE SUPREME COURT OF MISSOURI.

BRIEF BY DEFENDANT IN ERROR IN REPLY TO PETITION FOR RE-HEARING.

B. G. BOONE, Atty. General.
S. P. HUSTON, for Defendant in Error.

BRIEF IN OPPOSITION TO PETITION FOR RE-HEARING.

IN THE SUPREME COURT
OF THE UNITED STATES.

THE CHICAGO, BURLINGTON AND KANSAS CITY RAILWAY CO., Plaintiffs in Errror,

Against — No. 1244.

THE STATE OF MISSOURI, *Ex Rel.*, JOHN F. GUFFEY, COLLECTOR OF THE REVENUE FOR PUTNAM COUNTY, Defendant in Error.

I.

The statement made in the petition for a re-hearing herein that the question as to the separate existence of the branch line, was not made in the trial court or Supreme Court of the State of Missouri, is, to characterize it mildly, the grossest error. It was made all along the line in all the courts, and in proof thereof, defendant in error files herewith a copy of his brief in this case, as filed in the Supreme Court of Missouri, and refers to 2 subdivision, commencing on page 7. The petitioner is also in equal error when he says that suits are pending in other counties to abide the construction by this court of the act of 24th of March, 1870. Cases are pending in such courts, and are to abide the *result* in this court, but as the road taxed in those counties is *all branch line*, the decision of this case on the point made is equally decisive. Again, he is in error when he states that

"the greater part of the line in controversy" is *main line*, built by the St. Joseph & Iowa. The St. Joseph & Iowa company never built a *foot* of road, *main* or *branch*. After it sold out to the Burlington & South Western, *that* company built into the state of Missouri to Unionville, a distance of seven miles, and there formed a connection with this branch. It was all built by the Burlington & Southwestern, and this spur from Unionville to the state line was called main line by that company to distinguish it from the branch line which commenced at Unionville and ran south through a large part of the state. There has never been anywhere in the state any main line constructed other than this seven miles, and it was not constructed by the St. Joseph & Iowa, but by the Burlington & Southwestern. Again, if this company claims that a few miles of road which has been assessed as an entirety with other roads not exempt, is exempt from taxation, how can the courts apportion the assessment? This would be virtually to reassess the property. They should apply to the state board for the assessment of railroads, and have it either omitted, or, if assessed, assessed separately, or at least the burden is on them in a suit for taxes to make clear the value of the portion exempt. There is not a scintilla of testimony on this subject offered by plaintiff in error, but it asks the court to presume equal value per mile, without regard to station houses, turn-outs, etc. There is nothing on the entire record by which the trial court could determine what part of the tax levied on any particular mile of road, it is levied on it as an entirety, and if plaintiff in error claimed any of it was levied on a part of the entirety claimed to be exempt, it should have made it plain, so that the court could have severed it. No declaration of law to this effect was asked, no claim of this character made till after the decision of the case in *this court*, when, for the *first* time, plaintiff in error invokes this claim, in order to procure a re-hearing of this case.

But should this court conclude that the point decided does not cover the little spur from the state line to Unionville, facetiously called "main line," the defendant in error insists that the Burlington & Southwestern Company in availing itself of the act of March 24th, 1870, to purchase a railroad created by the legislature of Missouri, agreed to and did renounce all claim to an immunity from taxation. See authorities cited in original brief, also the following:

Paul vs. Virginia, 8 Wall, (U. S.) 168.
Ducat vs. Chicago, 10 Wall, (U. S.) 410.
Bank vs. Earle, 13 Peters, 519.
Cooper vs. Ferguson, 113 U. S., 1138.

III.

The Saint Joseph and Iowa could only sell or mortgage an immunity from taxation when clearly authorized by the legislature. See authorities cited in original brief.

In the charter the only authority was to mortgage the "property and franchise." This did not include *immunity* from taxation.

Morgan vs. Louisiana, 93 U. S., 223.
Louisville vs. Palmes, 109 U. S., 244.
Memphis R. R. Co. vs. Commissioner, 112 U. S., 617.
Arkansas R. R. vs. Berry, 41 Ark., 436.
State vs. Sherman, 22 Ohio St., 411.

If there was no legislative authority to mortgage the *immunity*, then the mortgage made by the Burlington & Southwestern Company, on the entire line, did not pass the *immunity*, and the foreclosure of the mortgage could not pass it. Then Elijah Smith did not succeed to the immunity by virtue of the master deeds under foreclosure. See authorities cited in former brief.

IV.

The Saint Joseph and Iowa Company could not purchase and thus destroy the property and franchise of the N. M. Central Company which was subject to taxation and the first to occupy the ground and then elect to construct a road under a charter with exemptions. See authorities in former brief in this case by defendant in error.

V.

After the adoption of the constitution of 1865, the legislature could not authorize a *sale* of this exemption. That would be equivalent to creating a new corporation with an exemption then prohibited by law. It would be an evasion of the spirit and intention of the organic law. See cases cited in original brief, filed in this case under subdivision IV.

B. G. Borne Atty Gen
S. P. Nuckles

Atty's for Def't in Error.